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OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY BY

SIR JOHN MACDONELL, C.B., LL.D.

AND

EDWARD MANSON, Esq.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῃ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

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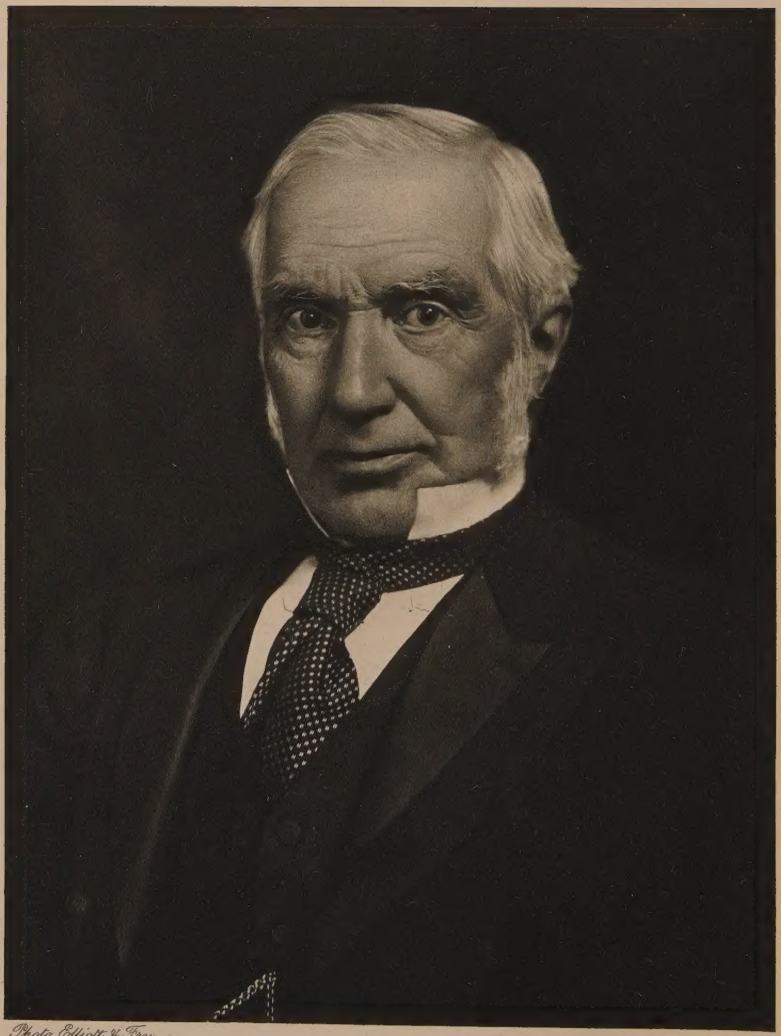

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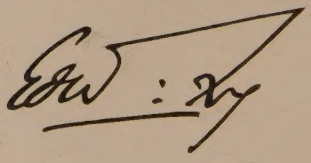

THE RIGHT HON. SIR EDWARD FRY.

By Lord Justice Kennedy.

As a leading Equity lawyer, the author of a standard legal treatise, for fifteen years a Judge of First Instance and in the Court of Appeal, winning universal respect by his dignity, precision, and sound learning, and, since his retirement from the Court of Appeal, an active Chairman of the Somersetshire Quarter Sessions, Sir Edward Fry has done great things within his profession. But in his case the professional career, distinguished as it has been, forms only a part, and not the most remarkable part, of a full and useful life. Since 1892, when he resigned his Lord Justiceship, Sir Edward Fry, instead of resting from labour, as most men at his age would have done, or contenting himself with the literary, historical, and scientific studies which he loves, has freely given his time and thought to the service of his country in the discharge of most important and difficult duties at home and abroad.

In 1897-8 he presided over the Royal Commission which was charged with an inquiry into the working of the Irish Land Acts; since then he has been Chairman of the Court of Arbitration under the Metropolis Water Act, 1902, and of a Royal Commission on Trinity College, Dublin; he was Legal Assessor to the International Commission which happily disposed of the North Sea incident in the course of the Russo-Japanese War; and this year he was appointed by the Crown to act as one of the Representatives of Great Britain at the Hague Conference. Sir Edward Fry, in regard to all these onerous and varied responsibilities (and others also), has amply fulfilled the general anticipation, through the happy union in him of trained intellectual faculties, at once subtle and robust, and wide culture, with the eminently judicial virtues of firmness, fairness, and tact. And it should not be forgotten by his countrymen that in the midst of these engrossing labours Sir Edward Fry, by his strenuous and trusted advocacy, did more than any one—except, perhaps, the late Lord Russell of Killowen—to promote such legislation as a year ago found its way into the statute book, for the punishment of the corruption of servants and agents by secret bribery, and thereby, let us hope, for the cleansing of modern commercial life from a spreading stain. His native Bristol may well be proud of so great and good a son.

K.

CUSTOMARY AND OTHER LAW IN THE EAST AFRICA PROTECTORATE.[1]

[*Contributed by* Sir Lewis Tupper, K.C.I.E., C.S.I.]

Extensions of Empire and Comparative Jurisprudence.—Amongst the many momentous consequences of the extensions of great Empires, comprising both advanced communities and backward races of mankind, are the better opportunities which students everywhere obtain for the progressive examination of different systems of law, and of fresh material for scientific jurisprudence, considered as a branch of sociology.[2] The East Africa Protectorate affords an example of this effect of the extension of Empire; and the appearance last year of the first volume of the Law Reports of the Protectorate enables us to see what the general legal position now is in that part of the world. The Laws of the Protectorate comprise Muhammadan Law among Muhammadan natives in the dominions of the Sultan of Zanzibar; and "among non-natives, applied Indian Acts, local Ordinances and Regulations, and where these are inapplicable, the Common and Statute Law of England existing at the time of the passing of the Order in Council, 1897." All the more important Indian Codes have been applied, such as the Penal Code, the Contract Act, the Evidence Act, and the Codes of Civil and Criminal Procedure. But the application is not blind or Procrustean. The East Africa Order in Council, No. 2 of 1902, declares that the civil and criminal jurisdiction of the High Court shall, *so far as circumstances admit*, be exercised in conformity with the Civil Procedure, Criminal Procedure, and Penal Codes of India, and the other Indian Acts in force at the commencement of the Order, except so far as otherwise provided by law. The Commissioner in making Ordinances is bound to respect existing native laws and customs "except so far as the same may be opposed

[1] *East Africa Protectorate Law Reports*: containing cases determined by the High Court of Mombasa, and by the Appeal Court at Zanzibar, and by the Judicial Committee of the Privy Council, on appeal from that Court (1897-1905). With Appendices, containing Notes on Native Customs, Appeal Court Rules, Legal Practitioners' Rules, High Court Rules, Circulars, etc. Compiled by R. W. Hamilton, Principal Judge, High Court. Printed by Waterlow & Sons, Limited, London Wall, London, 1907.

[2] For an explanation of this phrase see an Article by the present writer at pages 84 to 94 of No, VII. New Series of this Journal, June 1901.

to justice and morality"; and in all cases, civil or criminal, to which natives are parties, every Court is guided by native law so far as it is applicable, and is not repugnant to justice and morality, or inconsistent with any Order in Council or Ordinance, or regulation or rule made thereunder. With this we may compare the provisions of the Punjab Laws Act, making Punjab custom the first rule of decision in various matters, comprising chiefly succession, a part of the law of private conditions, and customs relating to religious usages or institutions, subject to the provisos that the custom is not contrary to justice, equity, or good conscience, or set aside by law, or was not declared void by any competent authority before the passing of the Act. Thus in two very different parts of the Empire we see British authorities exercising jurisdiction over races in very different stages of progress, and compelled by their responsibilities to make a close study of native usages, not only to the great benefit of practical administration, but also—undesignedly, though as a necessary consequence—to the advancement of juridical science.

Nor does comparative jurisprudence, understood as dealing not with the history of law, but with the provisions of mature codes in various countries, fail to secure some advantageous result. It is a feature of the Indian Codes that they are designed for immensely diversified populations standing on countless steps of the ladder of progress, from the savage Bhíl to the Calcutta merchant. This compels attention to principles which are generally applicable whenever strong rule has established law that can be enforced, and has provided for its administration through courts of justice. For a nation constantly brought into political contact with races in very diverse stages of progress, the possession of the Anglo-Indian Codes is a political asset of great value; and it may be that in the gradual development of laws suitable to primitive peoples, who are being weaned at least to peaceable and, we may hope, eventually to civilised life, and suitable also to conditions where a great intermixture of races, both civilised and uncivilised, prevails, these Codes may, in a world-wide empire, or at any rate in those parts of it which do not possess representative government, come to exercise an influence comparable to that of Roman Law in the development of Western civilisation. At any rate, in India British administrators have had to deal with legislative problems which now confront them in other parts of the world; and the experience so gained should be one of the national qualifications for the discharge of the onerous task which events have imposed upon us. It is satisfactory to note that as experience accumulates some of the Anglo-Indian Codes are supplemented or modified so as to adapt them the better to the varied requirements of different races and Provinces.

Need for Elasticity in the Administration of Indian Codes recognised by the Courts.—Indeed, when dealing with primitive folk it is always necessary to apply the Codes with discretion. The decisions reported in the volume

under consideration (which has been compiled by Judge Hamilton, the principal Judge of the High Court) throw little light on native usage. Probably the wild tribesmen do not carry their appeals to the highest tribunals. But there is enough to show that the Courts are fully alive to the need of flexibility and racial discrimination in applying Codes which, though easily adaptable in the hands of wise administrators, are certainly rather complex for uncivilised or partly civilised men. Thus Judge Hamilton (p. 84), with much prudence and good sense, has laid down that "the application of the Civil Procedure Code is not strict in the case of natives, and where no injustice has been shown in fact by the procedure followed, it is not the part of this Court to interfere to insist on a strict adherence to the technicalities of that Code." By leave of a Collector a man belonging to a savage tribe was accused under s. 498 of the Indian Penal Code of enticing away a married woman. Possibly the motive in so applying the Code may have been to support the authority of the chief, who had ordered the man, without effect, to return the woman. Cator and Hamilton, JJ., quashed the conviction on the merits and proceeded to remark (p. 64) that in disputes about wives criminal prosecutions should be resorted to only in very special cases. Such disputes, they said, "should usually form the subject of civil actions, and unless the native customs relating to them are known very intimately to the Judge, he should take the opinions of native assessors and record them on the file." The excellence of this authoritative advice will appear presently when something has to be said regarding the native ideas of marriage. On the other hand, the same Judges (pp. 79-80) confirmed a conviction of a Sudanese soldier of the offence of adultery under s. 497, Indian Penal Code, subject to proof that the woman was a Muhammadan, the Sudanese soldiery, as a rule, professing the religion of Islam. A footnote judiciously states that the rule in the previous case favouring civil actions "must be relaxed somewhat in respect of the Sudanese, who are of a peculiarly jealous and revengeful nature in matters affecting their women."

Notes of Native Custom appended to the Reports.—The general absence of discussions of native customs in the reports of cases is amply compensated by Appendix I in Judge Hamilton's compilation. This is a series of notes on the customs of different tribes put together from the reports of district officers, decided cases and Court inquiries, and a few published works, the information being subjected to comparison and correction. Two points of interest stand out at once. Procedure, which looms so large in some systems of early law,[1] is not noticed. As inquiries proceed, it may be hoped that some officers of the Protectorate will give the reason for this. Cases can certainly be found of early societies where procedure is not of importance because tribal organisation is strong; and what is determined by a strong chief or a strong council of elders in tribal assembly will be carried

[1] Maine, *Early History of Institutions*, 1875. Lectures IX., X.

out by the compliance of the tribe. On the other hand, the evidence goes to confirm the opinion of Maine, that the penal law of ancient communities is not the law of crimes but of wrongs or torts [1]—the injury being conceived as done to the individual, not to the State. Speaking of murder and rape, Judge Hamilton says: "These offences, which we consider as offences against the person, are regarded equally by the natives as offences against property. The idea common to civilised nations of a crime such as murder being an offence against society, and of such fictions as the 'King's Peace,' has no place in the native mind." To judge from these notes of custom—and, indeed, from other evidence of the same kind elsewhere available—it may not be rash to say that, on the criminal side, murder, theft, and offences connected with the relations of the sexes, and, on the civil side, marriage, succession, and inchoate property in land are, with kinship, the stuff out of which are formed primitive custom and thereafter early law. But the distinction which we make between civil and criminal law is of later origin.

Customs Analogous to Criminal Law.—Dealing first with customs analogous to criminal law, we are reminded of the remark of Maine [2] that it is in the highest degree probable that the pecuniary fine levied on tribes or families for the wrongs done by their members succeeded simple retaliation. Amongst these wild tribes of East Africa, though fines are spoken of as payable by individuals, we can almost see the gradual transformation of the *lex talionis* into a fine. With the Galla—north of the Tama river, and behind the Lamu Archipelago—blood can be wiped out only by blood. The Wataveta, whose home is on the eastern slopes of Kilimanjaro, admit that the *lex talionis* is the old law of punishment for an offence against the person, but the due penalty may be compounded by payment of compensation in cattle. In the case of the Wanyika—a number of more or less allied tribes inhabiting the Nyika or upland country between the coast and the Taru desert—"the penalty for murder is that from two to ten persons of the murderer's family be taken and given to the family of the murdered person. In default of this the murderer himself must be handed over to be put to death." The Akikuyu, near Mount Kenia, exact compensation for a death, *whether caused by accident or design*, to the extent of one hundred goats for a man, and thirty for a woman. The Masai allow atonement for murder by the payment of heavy compensation to the relatives of the murdered man, amounting to as much as a hundred head of cattle.

Here and there distinctions appear in contrast with the crude conception of the Akikuyu. With the Waboni, for instance, a person who causes death by accident is merely bound to produce another person to fill the place of the dead man. The Wateita also distinguish between accidental

[1] Maine, *Ancient Law*, Sir F. Pollock's edn. 1906, p 379.

[2] *Early History of Institutions*, 1875, p. 23.

and other homicide. In several cases there are scales of compensation graduated according to the manner in which death is caused, or the nature of injury to the person.

Maine has dealt upon the proneness of primitive men to apportion penalties in accordance with the passions of the injured persons,[1] and he takes as one of his illustrations the different punishments of the old Roman Law for a manifest thief (caught in the act) and the non-manifest thief (otherwise detected). Under the law of the Twelve Tables the manifest thief, if a slave, was condemned to death. The Wadigo "draw a distinction between a murder committed in the heat of passion and in cold blood, the number of persons demanded in the latter case being four times that in the former." The same tribe also hold that "in the case of robbing from a plantation by night, the owner is justified, if he cannot recognise the thief, in shooting at and killing him, but not if he is able to identify him." The Akamba also have a rule that no compensation is payable for a man killed when trespassing by night. Damages are claimable for rape, in addition to any other penalty—among the Galla a beating, and among the Wateita a fine of two bullocks—to which the offender may be liable; but among the Akamba, if he is killed *in flagrante delicto* no compensation is payable for his death. Not one of these cases is quite the same as that of the manifest thief, but in all we can trace the principle that anger or rage may be an excuse for violence.

Maine qualifies his view as to the nature of early penal law by the subsequent statement[2] "that it is not to be supposed that a conception so simple and elementary as that of wrong done to the State was wanting in any primitive society." Without venturing to question the report of Judge Hamilton that these East African tribes have no such idea, we may pretty confidently discern here and there faint traces of the beginnings of public authority. Thus the Wateita allow half the fines for offences other than homicides to go to the elders, and with this tribe a thief is bound not only to make restitution of the stolen property, but also to give a present to the elders. To the elders the Wataveta assign one ox out of the compensation for murder; and they require a man who causes another to lose a limb or an eye thereafter to contribute a goat to every public feast. In some of such cases, though not in all, the fee to the elders may be remuneration for their trouble in deciding. This is expressly stated with regard to the Akikuyu, who usually pay three goats to the elders for hearing a case—the equivalent of a Court fee. It will be remembered that in Maine's interpretation of the *Legis Actio Sacramenti* the interposing Prætor is remunerated by the parties for his trouble and loss of time.[3]

Customs Analogous to the Law of Private Conditions.—In the customs corresponding to the law of private conditions the most striking feature is that women—with reservations of which some are mentioned below—are

[1] *Ancient Law, ed. cit.* pp. 387-9. [2] *Ibid.*, p. 381. [3] *Ibid.*, p. 385.

regarded as mere chattels. Here the summary prefixed to the notes of custom by Judge Hamilton is most instructive. He says :—

"The fundamental ideas amongst most of the native tribes in East Africa regarding questions of family relationship are:

(1) That individual members of a family form the wealth and strength of the united family;

(2) That females cannot inherit and cannot dispose of property."

The summary, it will be observed, is not intended to be exhaustive. Some exceptions found in certain tribes to the second of these statements will be mentioned further on.

"(3) That females are themselves property to be bought and sold in marriage, to be assigned in payment of debt, and to be owned and inherited by their male relations.

In fact, the female members of a man's family are as much a part of his property as his cattle, and often the most important source of his income."

What is the bearing of this view of family life upon some of the best-known matters of interest which lie on or even beyond the limit described by Maine as "the threshold of jurisprudence"? Take, for instance, the *Patriarchal Theory*. The brothers McLennan no doubt succeeded in showing that the *patria potestas* of early Roman Law was not reproduced in other systems with exactly the same incidents; and it may be freely admitted that the group under the power of the father, with the Roman incidents, if archaic as compared with the modern family, was not primeval in the sense of being the earliest conceivable or even ascertainable form of the family amongst mankind.

Bearing of the Evidence on the Patriarchal Theory.—Admitting also with Maine himself[1] that in early law differences in the form of the family are to be expected, the question remains whether a patriarchal type, subject, of course, to the vicissitudes of variation and environment, may not be or may not become discernible amid the mists of time at a period anterior to the genesis of any law properly so called. In concluding the joint book of the brothers McLennan,[2] Mr. Donald McLennan says: "In none of the cases we have had to examine have we found [the *paterfamilias*] endowed by law or custom with powers of life and death or sale, the monopolist of family property, the only person in the family capable of having rights." What, then, do we find amongst the East African tribes whose customs are detailed in the book before us? The purchase of wives is universal. With the Wanyika the prices paid on the marriage of daughters and on the remarriage of widows form part of the benefit

[1] *Quarterly Review* for 1886, vol. 162, p. 198. It is well known that Maine wrote the article.

[2] *The Patriarchal Theory*, p 352..

of the inheritance. The punishment for the rape of an unmarried girl must include pecuniary damages to the father on account of the loss he will suffer on her sale. If a man murders his own wife or child the Wagariama impose no penalty, "as the murderer has in this case committed an offence against himself only and destroyed his own property." The power of the father could no further go; if he can kill his wives and children at pleasure, surely he can command them anything and they are likely to obey.

It is obvious that these drastic provisions of archaic custom are logically connected with the theory that women and their offspring are, like flocks and herds, the mere chattels of some male. But though the suggestion is a tempting one, it would be extremely rash to jump to the conclusion that the *patria potestas*, in the various forms in which we see it in many archaic societies, came into existence solely by this route. We may be content with the remark that it seems not improbable that the conception of women as merely chattels has in many cases profoundly influenced the course of early custom passing into law.

East African Customs and the Theory of Mr. J. F. McLennan.—As Mr. Andrew Lang has acutely pointed out, it does not matter much to Mr. McLennan's theory whether the strictly primitive family was patriarchal or not.[1] All that the theory comprises—totems (left unexplained), female infanticide, exogamy, marriage by capture, polyandry, and kinship through females only—may have come into existence ages after the half-human progenitors of the race roved in small and scattered groups, dominated by the strongest males.

Taking the East African customs as set forth in the present reports without going beyond them to other sources of information about the same region, we find very little which could be utilised by the adherents of Mr. McLennan in support of his views. Totems, female infanticide, and exogamy are not even mentioned anywhere; to which, of course, it may be replied that what we have is a record framed for judicial purposes, not a treatise on anthropology. Totemism is, however, connected with tree-worship, because if the totem is a tree it may be an object of reverence. We are told that "certain trees are considered sacred by the Akamba, and should any one damage one of these trees, he is fined one cow and one bull, which go to the elders." The motive assigned for female infanticide amongst savage races, namely, that women are a source of weakness to the tribe, and the motives known to exist in a much higher stage of civilisation—the difficulty of obtaining husbands of the proper caste, the disgrace attendant on the family if a grown-up daughter remains unmarried, and the expense of the marriage ceremonies—are alike absent where daughters are profitable commodities for sale. Dr. Westermarck[2] says broadly: "In Africa

[1] *Custom and Myth*, edn. of 1904, p. 248.

[2] *The History of Human Marriage*, 2nd edn. p. 312.

I do not know of a single district where the people are in the habit of destroying new-born children." Certainly the power of life and death already mentioned as belonging to the Wagariama father does not conflict with this impression. Nor do rules amongst the Masai, by which "it is permissible to procure the abortion of a child conceived out of wedlock, or to club it to death when born," indicate any general system of female infanticide, but suggest, or indeed almost prove, the contrary. As to exogamy, there is some evidence in Dr. Westermarck's book that marriages out of the tribe are avoided, though not prohibited.[1] Our record is silent on the subject of marriage ceremonies. If, as is antecedently probable, marriage by capture ever existed, it must have been superseded by the general system of the purchase of wives. I am able to say on excellent authority that the Wakamba and Wa-taïta cited by Dr. Westermarck[2] are the same as the Wa Kambe and Wateita of this record; and therefore amongst these tribes the symbol of capture does occur.

The record does indeed show certain customs of the nature of polyandry, but not of the Tibetan form, where the husbands are brothers; or apparently of the Nair form, where there is no such restriction. Nor is the custom by any means identical with the alleged, "group-marriage" of the Kamilaroi of South Australia.[3] With the Wataveta "it is usual for a man to lend his wives to his comrades of the same age-rank as himself." But adultery with another man's wife without his consent is punishable by fine and compensation. Amongst the Masai a much more extraordinary rule prevails. It is stated that adultery committed by a man with a woman of his own age-rank is no offence. Nothing is said as to the consent of the husband; and it is certainly remarkable if the passion of jealousy is in abeyance to this extent, even such penalties as would be called damages in civilised law being waived. May we hope that some officers of the Protectorate interested in anthropological inquiries will offer some explanation of this rule? The practice of the Wataveta has many parallels, and is not very surprising. Theoretically, with polyandry prevailing in the way described, there should be uncertainty of male parentage and kinship through women only. But this is not the case. The Wataveta rule of inheritance is that what we regard as the property passes to the sons of the deceased male, the eldest son taking the largest share, while the widows go to the eldest surviving brother. Theoretically, amongst the Masai all the property of a deceased elder belongs to his eldest male child. How can these apparently conflicting facts be reconciled? It seems at least a plausible conjecture that where a son adds to the strength of the tribe, and a daughter is valuable because her sale will bring in cattle, jealousy might be appeased by the prospect of gain; but this conjecture, taken by itself, is not altogether convincing, and probably there may be some theory or sentiment of fraternity amongst the complacent husbands and their friends. On the other hand,

[1] *Loc. cit.* p. 366. [2] *Loc. cit.* p. 384. [3] Westermarck, *op. cit.* pp. 53-4.

there need be no trouble about uncertain paternity; the man who owned the woman would own her children too, whether he or any one else were the father.

Taking, as I have just done, inheritance as a test of kinship, there is a case of kinship through females only. The Wadigo, who differ in this respect from all other Nyika tribes, make the children of the deceased's sisters his heirs. "Where there are no nephews by a sister, the inheritance goes to the family of deceased's mother, and, failing them, first to sons, and then to grandsons of his maternal aunts." But there is no word or suggestion to imply that the Wadigo practise polyandry.

Customs relating to Land.—Passing on from customs corresponding to the criminal law and the law of private conditions, we come to customs relating to the occupation of land, from which are eventually developed, in a great diversity of forms, the laws of real property. The evidence is scanty, and this is no cause for surprise. An elaborate law of real property goes with a long-settled community where the pressure of population on the soil, or the coincidence of chieftainship or, later on, of social distinction, with proprietary right has given land a special value. What is any one's for the taking need not be the subject of complicated rules. Moreover, any clear law of intestate family succession tends to preserve the inheritance of land from complexity. The Wateita custom is that "an occupation right to land is recognised, but should a man leave the land formerly occupied by him uncultivated for a season this right lapses." The Masai are pastoral nomads, and with them "land is frequently named after the section of the tribe that first used it as a grazing ground, or is for the time being occupying it. But individual right to land, as distinguished from tribal rights to land, are not recognised." The Akamba take a step in advance. They hold that "there is no individual ownership of land," but recognise family rights of occupation. So far, the evidence is entirely consistent with the theory that joint ownership precedes severalty. But the germs of severalty are, nevertheless, beginning to appear. The Wataveta are exceedingly primitive; as we have seen, they have a form of polyandry and the *lex talionis* is not yet forgotten, though not now acted on. Yet "ownership of forest land is recognised, and the different members of a family own each a separate plot"; and "a woman cannot inherit, but should the deceased leave no sons it is usual to give a small plot of land to his daughters, which, on their marriage, becomes the property of their husband." Here again some elucidation of the difficulty from some officer personally acquainted with the tribes would be very welcome. What is there to explain this very early appearance of severalty, while other tribes of the same Protectorate recognise only occupational, or tribal, or family rights?

Possible Enlargement of the Field of Archaic Jurisprudence.—Mr. Andrew Lang has waged a vigorous and, perhaps I may venture to say, a very successful battle against mythologists who hold it correct to compare only the myths of races speaking languages of the same family, or which have

in historic times been in proved contact with each other.[1] He widens the field of inquiry and contends that, apart from racial connection and imitation, we should look to similar conditions of mind in similar circumstances. There is a deep scientific significance in the old remark that one set of savages is just like another. If their weapons, their implements, their drawings and attempts at sculpture, their methods of ornamentation of things and persons, their child-like efforts to explain the mysteries of nature, their fantastic and monstrous imaginings issuing in mythology and folklore often show striking resemblances in different parts of the world, does not this point to a dynamic psychology of the race, implying that intelligence, when separated from instinct, will, at the beginning, give a like reaction when subjected, under like circumstances, to a like stimulus? If this is sound we may confidently expect that institutions which are the product of the workings of the mind and the pressure of circumstances will exhibit analogous resemblances. I make these remarks because it seems possible that the field of comparative jurisprudence in the historical sense may need the same kind of extension as the field of mythology. It may be that many people interested in historical jurisprudence have already made such an extension for themselves; but there are passages in the writings of Maine which appear to imply that we should limit our inquiries to particular races, and that the descent and affiliation of institutions should be the main object of our quest. Speaking of the affinities of English, Irish, German, and Roman Law, he says[2] that the true rival of the theories of the derivation of one body of custom from another is the "theory of the common descent of all from an original basis of usage which we must, provisionally at all events, call Aryan." Collective ownership of the soil is said[3] to be "an ascertained primitive phenomenon, once universally characterising those communities of mankind between whose civilisation and our own there is any distinct connection or analogy." Setting out examples of the family under *patria potestas* among Hindus, Athenians, Romans, Continental Celts, Germans, and Irish, Maine concludes that it is for the comparative method to determine whether these institutions "have sufficient similarity to suggest a common parentage, and to say what the parent institution is." Here we clearly see the influence on jurisprudence of comparative philology as determining linguistic affiliation. But in the view suggested above it is not so much the affiliation of institutions that we seek—although that has its place, and an important one—as the relation of institutions to the dynamic psychology of the race. If some or many of the mental conditions of savages, of pastoral minds, of still cohering tribes settling down to agriculture, of præ-feudal and feudal

[1] *Custom and Myth*, edn. of 1904. Article on "Mythology" in the *Encyclopædia Britannica*, 9th edition.

[2] *Early History of Institutions*, 1875, p. 296.

[3] *Op. cit.* pp. 1, 2. *Quarterly Review* for 1886, vol. 162, p. 198.

nobles and peasantry—nay, even of modern democrats also—can be assigned, we may attain some certitude notwithstanding the doubts and difficulties which encumber theories of borrowing and affiliation.

Comparision of some East African and Punjab Customs.—Now, if this view may, for the purposes of the present paper, be tentatively admitted, it follows that there are some significance and instruction in the comparison of any two or more primitive institutions bearing some resemblance to each other even when there is the strongest probability against any connection between the societies in which they occur and any derivation of one from the other. Indeed, the more probable the complete severance, the more will proved similarities contribute to the support of the main hypothesis, viz. that men in the same stage of mental evolution adopt like expedients in like surroundings. Let us take for example some well-known Punjab customs and one or two of the customs set forth in the East African record. A good many years ago I pointed out [1] that the practice of *chundavand* had all the characteristics of a survival. The general rule in the Punjab is that sons are first entitled to the inheritance, taking equally whether born of the same or different wives. This is called *pagvand*, from *pag*, a turban, the distinctive head-dress of a male. But a moribund exception is still found in a good many parts of the country by which the sons, however few, of one wife take a share equal to that of the sons, however many, of another. This is known as *chundavand*, from *chunda*, a knot of hair on the head or a knot of braided hair. I suggested that *chundavand* might be a relic of a time when several brothers might have between them several wives in common; that is, of a state of society which had begun to be polygamous without having entirely disused polyandry. Obviously it might be a facile composition of a dispute about an inheritance to say that the sons of each mother should together get an equal share. I have already mentioned that amongst the East African tribes the general rule that women cannot inherit is subject to certain exceptions. Thus amongst nearly all of the Wanyika, females may come in where there is no male collateral or descendant. The Wateita have the liberal rule that widows may inherit a share in miscellaneous property other than live stock. A Wataveta woman cannot inherit, but where there are no sons a small plot of land may be given to the daughters, "which on their marriage becomes the property of their husband." So far, there is merely a beneficial relaxation of the savage rule that condemns women to be chattels. There is an exception even to the rule that women cannot dispose of property. I have noted above that theoretically the property of a deceased elder amongst the Masai goes to his eldest male child. "But in practice he divides the greater portion of his cattle among his wives," and "on his death his wives give these cattle to their respective sons." The Masai practise a certain sort of polyandry. Do we see here a custom of which *chundavand* may be

[1] *Punjab Customary Law*, 1881, vol. ii. pp. 96-7.

a survival? If so, the survival owes nothing to affiliation or borrowing; we cannot suppose any affiliation or borrowing of institutions as between these East African tribes and the Punjab peasantry. I will not say that *chundavand* owes nothing to polyandry, of which there are lingering traces in some parts of the Punjab, chiefly in the hills. But the East African evidence suggests that the practice may have arisen when the savage idea of women as being in the same category with cattle was just beginning to be transformed by some nascent persuasion of their humanity. The plausibility of this suggestion is increased if we look at the customs of the Sirsa district of the Punjab as recorded some quarter of a century ago. There a woman is by no means a chattel, for the widow of a sonless proprietor may hold her husband's estate till her death or remarriage. But we are told "a girl is a valuable piece of property, and betrothal is a contract by which the girl's family bind themselves, often for a money consideration, to transfer the ownership of the girl to the boy's family on her reaching a marriageable age. . . . The ceremony of marriage actually transfers the ownership of the girl from her agnates to those of the boy." On the death of the husband the widow may remain in her husband's house "or may marry her agnate brother or cousin" (*i.e.* agnates in her husband's family) "with hardly any ceremony. As she already belongs to the family no formal transfer is required; the widow's marriage to her husband's brother is simply an arrangement within the family. She cannot marry any one but an agnate of her husband, without the consent of her husband's agnates, to whom she belongs. If they give her in marriage to an outsider, none of the elaborate ceremonies employed in the transfer of a virgin are required. The transaction is simply a sale, and the widow is transferred for a money price, with no more ceremony than a camel or a buffalo."

This description was written after careful local inquiries by a very distinguished Punjab officer, Mr. J. Wilson, who was at the time Settlement Officer of the Sirsa District.[1] Reading it, one is tempted to ask, Does this apply to the Punjabis of our own time, or to the savage tribes of East Africa? The days of our years are three score years and ten, but institutions survive in existing societies with a life in which a thousand years may be as yesterday. Surely the survival in the Punjab of customs to which we find close analogy amongst the savage tribes of East Africa may, without presumption, be held to add some weight to Mr. Morley's recent protest[2] against the suggestion that whatever is good in the way of self-government for Canada, must be good for India—a suggestion he described as "the grossest fallacy in all politics." Let this at least be said for the study of archaic jurisprudence, that it may help us to realise something of the breadth and depth of the gulf that is fixed between modern civilisation and the customs of primitive men.

[1] *Punjab Customary Law*, vol. iv. pp. 38-9.

[2] Speech at Arbroath, *Times*, October 22, 1907.

Practical Value of the East African Reports.—Judge Hamilton's compilation will, of course, have very great practical value for the officers of the Protectorate. Besides the decisions and the notes on native custom, it comprises the Court of Appeal Order in Council, the Appeals Ordinance, the Legal Practitioner's Rules, the High Court Rules, and Circulars to Magistrates and Office Rules. To any one with Punjab experience it at once recalls the *Punjab Record*—a well-known compilation of the same stamp, but without the notes of custom which in the course of the last thirty years or so have been supplied with much greater elaboration. Perhaps the resemblance between the present volume and the *Punjab Record* is another case in which the workings of the mind have produced somewhat similar concrete results under the stimulus of somewhat similar circumstances. I have not thought it necessary to dwell on the practical value of the work, for that is obvious; but I hope I have said enough to show that the beginning here made of the careful investigation of native custom is not without interest to the student of scientific jurisprudence considered as a branch of sociology.

"VOLENTI NON FIT INJURIA" IN THE LIGHT OF RECENT LABOUR LEGISLATION.

[*Contributed by* THOMAS BEVEN, ESQ.]

Early Forms of the Maxim.—The maxim "Volenti non fit injuria" is in its origin no more than an axiom of ordinary common-sense. The admission of the contradictory principle as a rule of action would go far to the subversion of all society. It is only by a reliance on the continuity and consistency of action that one man can trust another, or act in co-operation with him. And thus we find from the very earliest times that the principle involved is at the core of most human relations.

Homer speaks of the man ἑκὼν ἀέκοντι γε θυμῷ,[1] as all generations since, with the exception of the present, have spoken of him as one who must be justified by his words or action, or by them be condemned; since than these there is no working solution of the problem of society, which, before all, requires a basis of sense and not of surmise.

Aristotle discusses[2] αὐτὸς δ' ἑαυτὸν τὰ αὐτὰ ἅμα καὶ πάσχει καὶ ποιεῖ. Ἔτι εἴη ἂν ἑκόντα ἀδικεῖσθαι. The problem is not a legal one, but far wider—a moral one, the importance of which increases as men grow in moral responsibility and intelligence.

So soon as law separates itself from ethics and has rules of its own, the principle that a free man cannot be heard to aver against his own acts or words is ranged amongst its fundamental acquisitions; and as men cease to be children, and claim individual liberty of action, so the ambit of its influence is extended.

Whatever may have been the prominence given to the principle in the earlier stages of the Roman Law in the Lex Aquilia (B.C. 287), it is fully recognised. "Si quis in colluctatione vel in pancratio vel pugiles dum inter se exercentur, alius alium occiderit, si quidem in publico certamini, cessat Aquilia; quia gloriæ causa vel virtutis non injuriæ gratia videtur damnum datum. Hoc autem in servo non procedit, plane si cedentem vulneravit Aquiliæ locus; aut si non in certamini servum occidit nisi si domino committente hoc factum sit, tunc enim Aquilia cessat.[3]

Ulpian (A.D. 227), however, actually verbally invokes the maxim.[4] "Usque

[1] Iliad 4. 43.

[2] *Eudemian Ethics*, Bk. v. c. xi.

[3] D. 9, 2, 7, s. 4.

[4] D. 40, 10, 1, s. 5.

adeo autem injuria quæ fit liberis nostris nostrum pudorem pertingit, ut etiam si volentem filium quis vendiderit, patri suo quidem nomine competit injuriarum actio; filii vero nomine non competit; quia nulla injuria est quæ in volentem fiat.

Pomponius[1] at the same period puts it thus: "Quod quis ex culpa sua damnum sentit non intelligitur damnum sentire." But long before this period the philosophy of the Stoics and its doctrine of the equality and responsibilty of man had worked its way into the Roman Law and that dictum of Ulpian's, adopted into the Digest: "Quod ad jus naturale attinet omnes homines æquales sunt,"[2] carried along with it as a corollary that they were free to will and free to make contracts: "Volenti non fit injuria," and that these actions carried with them responsibility for their consequences.

The Canon Law phrases the maxim differently: "Scienti et consentienti non fit injuria neque dolus."[3] Bracton, as his manner is, states the principle with a leaning to the ecclesiastical rather than to the civil law form: "Cum scienti et volenti non fit injuria."[4] But so soon as we reach the Common Law reports the simple form recurs again. Thus in Y.B. of the 33 Ed. I.[5] Hunt is reported as saying, "Nay, Volenti non fit injuria e vous mesmes purchasates le bref de novele disseisine e suistes tant qæ lassise passa en la forme, etc.: jugement si encontre ceo verdist, etc." While in *Grendon* v. *Bishop of Lincoln*[6] Manwood, J., quotes it in the same form, as if appealing to an axiom.

One more instance only, and for a reason to be made plain presently. In *Horne* v. *Widlake*,[7] a generation later, the King's Bench in giving judgment said: "If there had been a footway over the close of J. S. by a hedge, and J. S. will remove the hedge into a new place, if passengers in using their way go by the hedge, where it is newly set and fixed, they shall not be punished for it, because it arises from the act or tort of the plaintiff himself, and "volenti non fit injuria" as in 8 E. 45a, where a similar decision is recorded.

Now, in all these cases—and more might be added—the particular form of expression of the principle is unimportant, as it is used to record the conclusion of a manifest fact, not as a canon to be used in pursuing an investigation. The state of mind of J. S., who removed the hedge, is nothing to the point; he must take the *primâ facie* consequences of his acts, such as they are, and the inquiry whether he was *volens* or not in the subjective import is altogether immaterial.

Feudalism and State Intervention.—But the instances so far relied on belong to a period of history when the conception of the State was fundamentally different from that now prevailing. The feudal system conflicted

[1] D. 50, 17, 20. [2] D. 50, 17, 32.

[3] Sext. V. De Regulis Juris, 28, which conveys a suggestion of C. 2, 4, 34, concluding "Nec unquam volentibus dolus inferatur."

[4] F. 413b. [5] (1304) Ed. Horwood, 9. [6] (1575) Plow. 493. [7] Yelv. 141.

strongly with the Roman Law maxim, "Omnes homines æquales sunt," and the Common Law had to struggle through centuries to obtain recognition of it. Our history under the Plantagenets and Tudors shows a constant intermeddling in the most insignificant affairs of daily life by the kings, and an oversight in minutest matters by the merchants and crafts guilds, and the municipal corporations. The nation was in swaddling clothes; the State was supreme; the individual quite insignificant, and personal freedom far off. There was legislative interference everywhere, and what was not covered by legislation was made matter of regulation. To give two illustrations of how little freedom of contract or of action there was at this period: first take the statute of Nottingham, De cibariis utendis.[1] This prohibits more than two dishes to be served at meals. Next turn, more than two hundred years later, to the 5 Eliz. c. 4, an Act containing divers orders for artificers, labourers, etc., and mark the anxious and laborious care with which every incident of the relation of master and servant is regulated to "banish idleness, advance husbandry, and yield unto the hired person, both in the time of scarcity and in the time of plenty, a convenient proportion of wages." Yet in a time like this, whenever the question arises between man and man and no matter of State or trade concern intervenes, the inference of voluntary action is drawn from action and no other suggestion is allowable. The first chapter of Froude's *History of England* very graphically sketches the features of this period.

The Revolution and Freedom of Contract.—The Rebellion and the Revolution brought quite other notions of State policy into being, and though hampered by many fluctuations in legislation adapted to particular exigencies, the broad trend of events was to equal individual freedom and unfettered contractual power. These new influences, greatly aided by the writings of Hume and of Adam Smith, became paramount in the half century between the repeal of the Catholic laws and the meeting of the Parliament of 1868, through the acceptance of the theories of legislation of Bentham and his followers, particularly James and John Stuart Mill.

There are, nevertheless, deflections during this palmy period of free and equal rights from the dominant policy and instances of interference with free action by legislation.

The Truck Act[2] and the series of Factory Acts are typical cases of this. Yet possibly these may be justified as exceptions to the rule of personal responsibility and not as infringements of it. The wide generalisation of the Roman Law implied its limitations. Only those were *æquales* who were *sui juris*. Those under disability, in so far as they were so, were excluded. Under the Common Law, where imbecility or immaturity is an element in the case, there has always been asserted a duty of protection in the State to those who cannot protect themselves.[3] The condition of things that pro-

[1] 10 Edw. III. c. 3.

[2] 1 & 2 Will. IV. c. 37.

[3] *E.g.* the Statute De Prerogativa Regis, 17 Ed. II. st. 1, cc. 9, 10, the care of lunatics.

duced the Truck legislation was absolutely abnormal and scandalous, as readers of Disraeli's *Sybil* may judge; while the Factory Acts were, in the first instance, directed to protect those under disability and weak. Another instance where the State has interfered to advantage is where exceptional privileges have to be given to a class, which privileges are peculiarly susceptible of abuse, the freedom of contract of this class may be restrained in the public interest, as in the case of the Cab Acts.

But generally, in the period we are now concerned with, the principle "Volenti non fit injuria" was accepted fully in its obvious meaning: he who consents to an act is not wronged by it;[1] and he is held to consent who so acts that consent is the reasonable conclusion to be drawn from his action.

The interpretation given to the maxim in this period is fixed by the judgment of Bayley, J., in the "Spring Gun" case:[2] "It is sufficient for a party generally to say, 'There are spring guns in the wood,' and if another then takes upon himself to go into the wood, knowing that he is in the hazard of meeting with the injury which the guns are calculated to produce, it seems to me that he does it at his own peril, and must take the consequences of his own act. The maxim of law, 'Volenti non fit injuria,' applies, for he voluntarily exposes himself to the mischief that has happened. He is told that if he goes into the wood he will run a particular risk, for that in those grounds there are spring guns. Notwithstanding that caution he says, 'I will go into the wood, and I will run the risk of all consequences.' Has he, then, any right, after he has been distinctly apprised of this danger, to bring an action against the owner of the soil for the consequences of his own imprudent and unlawful act? I think not." In this case the element of contract was absent. Now turn to the case of contract.

Towards the end of the same period the law is thus stated in a text-book of authority:[3] "The master, therefore, is not responsible for injuries sustained by his servant through the viciousness of the horse which the servant is employed to groom, or through the breaking down of a van or carriage in which the servant is directed by the master to ride or drive, or from the employer's keeping an insufficient staff of servants for the work he has to do, or through the use of dangerous machinery, with the use of which the servant is, or professes to be, acquainted, and which he has voluntarily undertaken to use, or for the dangers attendant upon the mounting of

[1] Cal. Civil Code, ss. 35 and 15:

"Consent is generally a full and perfect shield when that is complained of as a civil injury which was consented to. . . [A man] is not injured by a negligence which is partly chargeable to his own fault." Cooley, *Torts* 2nd ed. 187.

"That to which a person assents is not esteemed an injury." Broom, *Legal Maxims*, 268.

[2] *Ilott* v. *Wilkes*, 3 B. & Ald. 304, 311.

[3] Addison on *Torts*, 4th (Wolferstan's) ed. (1873), 397.

Reference to Buller and Leake (3rd ed. 1868), 363, will show that the law as here set out is not overstated. See, too, the editions of Selwyn's *Nisi Prius*, and Roscoe, of the same date.

scaffolds or unfinished staircases and landings, which the workman has voluntarily undertaken to mount, with as much knowledge of the attendant risk as the person who employs him." No examination of the motive of the person putting himself in circumstances of obvious danger was dreamed of even: he acted, and he was presumed to undertake the consequences. Even remoter was the conception that the employer was to give evidence of his man's state of mind over and above the inferences pointed by his actions.

The Exchequer decision of *Skipp* v. *Eastern Counties Railway Co.*[1] was accepted as concluding the matter. There a railway man sued in respect of injuries caused, as he alleged, by the railway company not having a sufficient staff to safeguard him in his work. He had been employed in the work for several months, and had not complained. Martin, B., held that the facts raised the presumption that the man was *volens*, and nonsuited. The full Court held this to be right. Even had the case been left to the jury it could only have been with a direction to find for the defendant. Where substantially identical facts have been again and again submitted to juries, in process of time a rule of law arises; and in this case the rule was definite, and left no place for the prejudice of any particular jury.[2]

Skipp v. *Eastern Counties Railway Co.* was a case wherein a contractual relation was involved; the rule of law was clear that the workman was held to undertake the circumstances flowing from the position he had assumed, in the absence of evidence to the contrary.

Woodley v. *Metropolitan Railway Co.*[3] differed only in that the defendants conducted their work in their usual manner, and the plaintiff, who had contracted to work in proximity to it, was injured when, had alterations or safeguards been used, he would have probably escaped. The judgment of Cockburn, C. J.,[4] in the Court of Appeal is a clear statement of the sense in which up to now the maxim had been taken. A man must be taken to be aware of the nature and character of the work on which he enters at the time he enters on it: "he takes it with its accompanying risks"; he is *presumed* to be both *sciens* and *volens*, and aught else of the same kind that the maxim connotes, when he enters on his employment; and the onus is on him to prove if it is otherwise. Mellish, L.J.,[5] dissented, and his dissent is most significant. He regarded the well-ascertained position of the servant in relation to the master, that he is presumed to take the risks of the employment, to depend on the contract between them. If there was a contract, the presumption that the surrounding risks were accepted as an incident of the terms of it, *primâ facie* attached; but the case before the L.J. was not one of contract, and because it was not, he was "unable to discover any principle by which railway companies are freed from the liability of taking reasonable care that the servants of contractors are not injured by the

[1] (1853) 9 Ex. 223, followed *Feltham* v. *England*, L.R. 2 Q.B. 33.
[2] This point is admirably illustrated by Holmes, *The Common Law* 123.
[3] (1877) 2 Ex. D. 384. [4] At p. 389. [5] At p. 391.

passing trains." This is an adumbration of the view that was so soon to become dominant, and to an extent for which the L.J. was quite unprepared; since he is clear that if the case had been of contract the implication of an undertaking of the risk would be plain. But the answer to Mellish, L.J.'s contention is given in the Court of Appeal in *Batchelor* v. *Fortescue*[1] by Brett, M.R. "There was no contract between the defendant and the deceased, no duty was cast upon the defendant to take care that the deceased should not go to a dangerous place." If the trains had been worked in other than the usual way there would have been duty; and there would have been negligence.

Thus, according to what appears to be the consensus of opinion of English lawyers up to this date (1877), a person acting on his property and within his rights could not be required to limit his exercise of them because A desired to earn his living safely in their immediate neighbourhood.[2]

Growing Interference with Contract.—The view taken by Mellish, L.J., is, however, an indication of a change of popular sentiment that had for some few years been making itself felt, and which became most apparently potent after the meeting of the Parliament of 1868.[3] Mellish, L.J., we have seen, looked upon interference with the implications of Contract Law as excluded by the very terms of the proposition; but the Irish legislation of the Parliament of 1868 accustomed people to what was once quite out of range. Within three years of Mellish, L.J.'s utterance, the legislature had enacted that any agreement, condition, or arrangement which interfered with certain privileges they granted to occupiers of land should be void.[4]

In the same year the Employers' Liability Act, 1880,[5] was passed, and henceforward a marked change in judicial utterances on labour questions is to be noticed, due not perhaps so much directly to the operations of the Act as to the change in public sentiment, of which the Act was an outcome. This gives peculiar prominence to the celebrated judgment of Bowen, L.J., in *Thomas* v. *Quartermaine*. If there could be a clear case of "volenti non fit injuria" under the old law *Thomas* v. *Quartermaine* is that case. As Lord Esher puts it in *Yarmouth* v. *France*,[6] under the old law it would have been said: "You" (the servant) "have entered into or continued in this employment where this thing of which you complain is open and palpable, and therefore it is an implied condition of your contract of service that you take upon yourself the risk of accident therefrom, and consequently you have no remedy against your employer." The point discussed in *Thomas* v. *Quartermaine*

[1] (1883), 11 Q.B.D., 474, 479. *Cf. Le Lièvre* v. *Gould*, [1893] 1 Q.B. 491.

[2] This is of course subject to what is said in the Exchequer Chamber in *Indermaur* v. *Dames* L.R. 2 C.P. 311, 313.

[3] Herbert Spencer, in *The Man and the State*, takes 1860 as the date when protective legislation makes notable headway. His catalogue of it is worth studying.

[4] Ground Game Act, 1880, 43 and 44 Vict. c. 47, s. 3.

[5] 43 and 44 Vict. c. 42.

[6] 19 Q.B.D. 647, 651.

was whether the principle involved in "volenti non fit injuria" was excluded by the Employers' Liability Act, 1880. The argument seems to have sought to identify the principle of the maxim with the defence of contributory negligence; but it is plain that they are by no means identical. The one implies negligence in the transaction itself; the other is independent of negligence, though at some antecedent stage there may have been negligence. It may indeed be possible to imagine cases where a workman agrees to risk the future negligence of his employer, but such cases would be of the rarest occurrence in practice; while as to the *past* negligences, if they are plain and apparent they are no more than the risks of the business and cannot be added to.

"Volenti" not "Scienti."—The most quoted passage relating to the present matter in Bowen, L.J.'s judgment is: "The maxim, be it observed, is not 'scienti non fit injuria,' but 'volenti.' It is plain that mere knowledge may not be a conclusive defence. There may be a perception of the existence of the danger without comprehension of the risk . . . There may again be concurrent facts which justify the inquiry whether the risk, though known, was really encountered voluntarily . . . The defendant in such circumstances does not discharge his legal obligation by merely affecting the plaintiff with knowledge of a danger which, but for a breach of duty on his own part, would not exist at all."

In these words lie the germ of an entire reversal of what hitherto had been the law. They are the foundation of the notion that where a workman is injured while working in a dangerous employment the onus lies on the employer to show that he was *sciens*, and *volens*, and the rest of it, when he entered on the employment; in place of the established proposition that an adult of ordinary intelligence "is presumed to have been capable of ascertaining every fact which could have been apprehended by the senses of a person having the same opportunities as he had for exercising those senses in relation to the dangerous conditions which caused the injury."[1]

That this last was the rule of the Common Law cannot be doubtful; and a workman working in circumstances of risk could not be permitted to exonerate himself by saying that that was not his intention; for, as Lord Macnaughton sums up the law,[2] "It is, I think, a well-established principle in English law that civil obligations are not to be created by, or founded upon, undisclosed intentions. That is a very old principle. Lord Blackburn, enforcing it in the case of *Brogden* v. *Metropolitan Railway Co.*,[3] traces it back to the year-books of Ed. IV. (17 Ed. IV. 2 pl. 2) and to a quaint judgment of Brian, C.J.: 'It is common learning,' said that Chief Justice, who was a great authority in those days, 'that the thought of a man is not triable, for the devil has not knowledge of men's thoughts.'"

Neither, in the absence of positive evidence, could the question whether

[1] Labatt, *Employers' Liability*, vol. i. 1037, where hundreds of cases are cited in support.
[2] *Keighley, Maxsted & Co.* v. *Durant*, [1901] A.C. 240, 247.
[3] (1877) 2 App. Cas. 692.

the risk was accepted be left to the jury; for the fact that the man was working in the circumstances would, as was pointed out in *Skipp* v. *Eastern Counties Railway Co.*, point the conclusion which the jury would be directed to draw. If they declined, their verdict would have been set aside by the Court, and judgment entered for the defendant. But, as was said by Bowen, L.J.: "It is plain that mere knowledge may not be a conclusive defence." Where, as in *Yarmouth* v. *France*, there was evidence that the workman had complained of the danger and stayed on with a promise of precaution being taken, the presumption of acceptance of the risk was rebutted and a case made for a jury. The jury would have evidence of a fact to consider, not a mere assurance of a mental state which hitherto had not been so regarded. Yet in *Smith* v. *Baker* the House of Lords went far beyond the doctrine of *Thomas* v. *Quarterman*. The facts raise exactly the point that had been decided in *Skipp* v. *Eastern Counties Railway Co.*[1] A workman was exposed to a danger of the employment, but outside the immediate object of his own work; in one case the running of periodic trains; in the other the swinging overhead of large stones. The House of Lords decided that "the mere fact that he [the workman] undertakes or continues in such employment, with full knowledge and understanding of the danger, is not conclusive to show that he has undertaken the risk." So far this is old and familiar law; but the rule laid down is also, in the words of Lord Herschell,[2] "it must have been a question of fact and not of law, whether the plaintiff undertook the employment with an appreciation of the risk."

Consent a Question of Fact not Law.—That is, the old presumption of law is abolished; and the defendant has to prove an intention on the plaintiff's part to take the ordinary risks of the employment; and the fact of working in the surroundings is not *primâ facie* proof even of his having done so. Or, to adopt the words used in *Williams* v. *Birmingham Battery and Metal Co.*[3]: "It is no sufficient answer to the *primâ facie* liability of the employer to show merely that the servant was aware of the risk and of the non-existence of the precaution which should have been taken by the employer, and which, if taken, would, or might, have prevented the injury. Whether the servant has taken that upon himself is a question of fact to be decided on the circumstances of each case." The master has now to probe into the man's mind to find his intention in taking the work; he has to give the man's reason, and the man's action is not even *primâ facie* evidence of this intention; reliance can no longer be placed on what he does, for a jury is to find what he thinks.

If, then, the considerations adduced above are rightly set out, we have to face not merely a change in the law but an absolute reversal of it, brought about by public opinion operating on the judicial mind. There does not now seem any difference in the position of an employer who makes his

[1] [1891] A.C. 325. [2] At 367. [3] [1899] 2 Q.B. 338.

contract, having performed all the obligations imposed by the Factory Acts as to fencing and protecting his machinery, and an employer who makes his contract with his employé and quite ignores [1] them. The law in the United States seems to stop short of the English conclusion, if what is said in *Ward* v. *Dampskibselskabet Kjoebenhaven* [2] is authoritative: "As to the crew and regular gangs of workmen from shore, who are familiar with the location and requirements of hatches, their knowledge of the situation and their continuance at work are held to be conclusive evidence that as to the particular danger of which they are thus advised, they take the risk"; the judgment goes on to contrast in this respect the case of passengers and visitors, whose position seems to be like that which the British workman's now is.

Contracts and Public Policy.—But, far as the law had gone, two English Judges were found who were of opinion that it had gone yet farther, and held that where there is "an agreement between A and B, that B shall be at liberty to break the law, *which has been passed for the protection of B.*"[3] "Such an agreement would be in violation of public policy and ought not to be listened to."[4] The wise words of Jessel, M.R., ought to have deterred these two learned Judges from getting "astride" that "very unruly horse," "public policy;"[5] for in *Printing and Numerical Registering Co.* v. *Sampson* he says:[6]

"It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which more than another public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred, and shall be enforced by Courts of Justice." The correct view of the English law at the time of the decision in *Baddeley* v. *Earl Granville* is so well expressed in a New York decision, though of much later date,[7] that space must be found for an extract. "The principle contended for seems to rest, if it can be maintained at all, upon a question of public policy. The Factory Act, it is said, is passed to regulate the employment of women and children, and imposes upon the employer certain duties, and subjects them to specified penalties in case of default; that a sound public policy requires the rigid enforcement of this Act, and it would contravene that

[1] *Holmes* v. *Clarke*, 7 H. and M. 937; *Britton* v. *Great Western Cotton Co.* L.R. 7 Ex. 130.

[2] 136 Fed. R. 502.

[3] Unus quisque protest renuntiare juri pro se introducto. Per Lord Selborne, *Great Eastern Railway Co.* v. *Goldsmid*, 9 App. Cas. 936.

[4] *Baddeley* v. *Earl Granville*, 19 Q.B.D. 423, 426.

[5] Per Burrough, J.; *Richardson* v. *Mellish*, 2 Bing. 252.

[6] L.R. 19, E. 9, 465. See also *Rousillon* v. *Rousillon*, 14 Ch. D. 365; *Tullis* v. *Jacson* [1892], 3 Ch. 445.

[7] (1896) *Knisley* v. *Pratt*, 148 N.Y. 372, 377.

policy to permit an employé, by implied contract or promise, to waive the protection of the Statute. We think this proposition is essentially unsound and proceeds upon theories that cannot be maintained." "The Statute does indeed contemplate the protection of a certain class of labourers, but it does not deprive them of their free agency, and the right to manage their own affairs."

Quod optanti divum promittere nemo
Auderet volvenda dies en attulit ultro.

The Workmen's Compensation Act, 1897.[1]—By the Workmen's Compensation Act, 1897, s. 3, the Act "shall apply, notwithstanding any contract to the contrary made after the commencement" of it; unless the Registrar of Friendly Societies shall approve and permit of other terms of compensation being substituted for those provided by the Act; and even his paternal care must not be exercised beyond limits very strictly defined.

A well-known publicist[2] writes of this legislation: "It is well worthy of the attention of lawyers and statesmen of other countries as being the earliest specimen of a type of legislation which will unquestionably become more and more common in future years. How far the constitutional limitations by which the statutory powers are circumscribed in the United States will assist employers in resisting such legislation is a question to be settled."

Already, the Employers' Liability Act, 1880, has been enacted almost in the same words in most of the Colonies, and in many of the leading of the American States, as Alabama, Massachusetts, Colorado, Indiana, New York (but that deals with negligence only, and does not infringe on a liberty to contract); yet the community of sentiment which has recommended the one may not improbably be potent in alluring to the adoption of the other, notwithstanding that new theories of responsibility are involved in it.

The Workmen's Compensation Act, 1897, has been adopted in several of the Colonies almost textually; and in New Zealand has been amended, and, besides, much other legislation has followed, more restrictive still of the right to make contracts in labour matters, as, for example, the Industrial Conciliation and Arbitration Act, 1905. This provides that any party may make application in an industrial dispute for settlement by a Conciliation Board constituted by the Act.

S. 59 of the Act is as follows: With respect to every industrial dispute which, having been duly referred to the Board, is not settled under the provisions for settlement hereinbefore contained, the following special provisions shall apply:

(*a*) At any time within one month after the filing of the Board's recommendation *any of the parties* may, by application in the prescribed form filed in the office of the clerk, refer such

[1] 60 and 61 Vict. c. 37. [2] Labatt, *Employers' Liability*, vol. ii. 21-33.

dispute to the Court [*i.e.* the Court of Arbitration constituted under the Act], and thereupon such dispute shall be deemed to be before the Court.

(*b*) If at the expiration of such month as such application has been duly filed then, on and from the date of such expiration, the Board's recommendation shall operate and be enforceable in the same manner in all respects as an industrial agreement duly executed and filed by the parties.

That is, a power to make ordinary contracts, irrespective of the consent of the person chargeable, is made a portion of the ordinary State machinery of New Zealand; and since this Colony is a particularly progressive one, may be taken as an indication of whither we are tending.

A late well-known County Court Judge boasted not long ago: "In my circuit the law of common employment has been for some time practically obsolete." So in a few years any lawyer may say with greater authority, for he will not be taking on himself to dispense with a law he should administer, "The maxim 'Volenti non fit injuria' has been edged out of all that sphere of law which has to do with labour relations."

Resumption of Control by the State.—A remarkable change has been and is being effected. In the time of Edward III. we have seen that the number of dishes one might partake of was rigidly prescribed; and in the time of Elizabeth we have also seen that every relation of labour was made the subject of regulation. After a trial of the principle "omnes homines æquales sunt," and an age of freedom of contract and of action, we are back again in the region of State tutelage; but with a difference. Then the outside force was that of vigorous and able monarchs, working for the common good and the stability and force of a realm beset by many foes. Now the State's coercive powers are invoked, not for the protection of the weak, but for the aggrandisement of the strong, to secure advance posts whence powerful labour organisations may make further aggressions, or to sanction the fanaticism of extremists in their war against other men's freedom in meats and in drinks.

THE CENSORSHIP OF STAGE PLAYS.

[*Contributed by* W. F. Craies, Esq.]

From time to time the action of the English authorities with reference to the censorship of stage plays arouses animadversion by playwrights or persons interested in the production of plays, including the literary classes and theatre-goers. The outcry lately raised on the disallowance of a play named *Waste*, written by Mr. Granville Barker, affords occasion to consider the history and law with reference to the licensing and control of representations of plays and similar productions on a public stage.

During the Middle Ages there is little recorded with respect to stage plays.[1] Miracle plays were represented under the patronage and control of the clergy, often in cathedrals or other churches, but apparently in some places, *e.g.* in Cornwall, in open-air theatres specially constructed.[2] Such players as existed were usually in the service of the King or the Lord Chamberlain, or of some great person; and independent and strolling players were liable to be treated as vagabonds, unless they had a Justice's licence.[3]

At the Reformation certain statutory provisions were made to restrain the freedom of speech exercised in what were then described as interludes. These seem originally to have been dramatic representations of a light or humorous character introduced between the acts of mystery plays. *Gammar Gurton's needle* and *Ralph Royster Doyster* were described as interludes; and they are perhaps represented in the comic business introduced in many of Shakespeare's plays.

Plays and interludes were exempted from the sumptuary laws of Henry VIII; but in the legislation of Henry VIII, Edward VI, and Elizabeth and James penalties were imposed against interludes contrary to the orthodox faith, or depraving or reviling the Eucharist or the Book of Common Prayer;[4] In some cases royal proclamations were issued against interludes of this character;[5] and James I forbad representations of living Christian sovereigns.

[1] See Jusserand, *La Via Nomade*, 122.

[2] Mr. Quiller Couch (*From a Cornish Window*) refers to traces of such theatres, known as plainanguairy, near Fowey and St. Just in Penwith.

[3] 14 Eliz. 5. v.

[4] 34 and 35 Henry VIII, c. 1; 1 Ed. VI, c. 1, s. 1; 1 Eliz., c. 2; 3 James I, c. 21. The first and last of these Acts are repealed.

[5] In 1549 and 1556. In 1624 a representation of a Catholic play in a private house was made a Star Chamber matter.

Even at the present time a similar prohibition as to any living sovereign may be issued and enforced under the Theatres Act, 1843. Plays in churches and churchyards are forbidden by canon 88 of 1603.[1]

The Lord's Day Act of 1625[2] forbids interludes and common plays on Sundays, classing them with bull-baiting and bear-baiting, under pain of civil penalties and without prejudice to ecclesiastical punishments or censures.

The views of Puritans as to stage plays found expression in 1633, in Prynne's *Histriomastea*, and though he wrote a short retraction in 1649, the Long Parliament suppressed all theatrical representation, punishing both performers and audience,[2] and though the stage revived at the Restoration, it is significant of its position that in the Index of the Statutes of the Realm (to 1713) there is a cross-reference for Players to Rogues and Vagabonds, and it may fairly be said that at the end of the eighteenth century the stage depended on the favour of the Crown or the Court and, apart from such favour, hardly possessed the right to live at all. And while the conditions of the existence of the drama have to a considerable extent been changed by legislation during the eighteenth and nineteenth centuries, the drama has not yet acquired the liberty of unlicensed privilege accorded to authors and the press.

The control of the Lord Chamberlain over stage plays can be traced to 1621. Before that date, and from 1545, the control was in the King's Master of the Revels.[3] The Lord Chamberlain in 1737 acquired statutory powers as to the licensing of plays by 10 Geo. II, c. 28, intituled an Act to amend so much of a Vagrancy Act of Anne (13 Anne c. 21) as relates to common players of interludes.[4] The occasion for passing the Act is said to have been a political play, the *Golden Rump*, written by Henry Fielding. Ss. 3 and 4 of the Act require submission of all new plays to the Lord Chamberlain, authorise him to prohibit the acting of any new play, and impose penalties for performance in defiance of the prohibition.

This Act continued in force till 1843, when it was superseded by the Theatres Act (6 & 7 Vict. c. 86). Under that Act the representation of stage plays for hire in Great Britain is placed under the supervision and control of the Lord Chamberlain. This office is not now a Cabinet office:[5]

[1] The statute of Wynton, 13 Ed. I, prohibited fairs in churchyards, and thereby the class of theatrical entertainment usual at fairs (Kermessen).

[2] 1 Charles I, c. 1.

[3] This office is said to have been a commission in 1581 between a statesman, a divine, and the Master of the Revels. In 1603 the poet Daniel was made Master of the Revels.

[4] 12 Anne, st. 2, c. 23, in Ruffhead, repealed in 1740. 13 Geo. II, c. 24, s. 36. Ss. 1 and 2 of the Act of 1737 treat as rogues and vagabonds players acting in places where they were not legally settled, unless under patent or licence from the Lord Chamberlain. By 17 Geo. II, c. 5 (1744), common players of interludes were to be deemed rogues and vagabonds who represented stage plays, etc. for hire not being authorised by law.

[5] It was so till 1782.

but the holder of the office comes in and goes out with the Ministry, and the office is in that sense political. When it is intended to produce and act for hire in any theatre a new stage play, or new acts, scenes, or other parts added to an old stage play, or any new prologue or epilogue or addition to an old prologue or epilogue, a copy must be sent to the Lord Chamberlain. The copy must be sent at least seven days before the date of the intended representation, and must be signed by a manager of the theatre in which it is to be represented: and if the Lord Chamberlain disallows the whole or any part of the play, etc., it is illegal to represent such disallowed whole or part (Vict. 12).[1]

The Lord Chamberlain has also power to forbid the representation of any stage play, or any act, scene, or part thereof, or of any prologue or epilogue or any part thereof, whenever he is of opinion that such veto is fitting for the preservation of good manners (or morality), decorum, or the public peace (s. 14). This power was exercised in 1907 as to the *Mikado* by Gilbert and Sullivan.[2] The veto may be as to the whole of Great Britain, or as to specified theatres, and may be absolute, or for such time as the Lord Chamberlain thinks fit.

It will be seen from the enactments above stated that the Lord Chamberlain is the person entrusted with the censure of stage plays, and that as to plays to be performed for hire is subject to no judicial control and can be controlled only by the King or by Parliament.

The actual machinery for carrying out the censorship is by sending the play, with a fee not exceeding two guineas, to the Lord Chamberlain's Department. It is there read by an official known as the examiner of plays, who is not mentioned in the Theatres Act, but is appointed by the Lord Chamberlain, and paid out of the Civil List as settled by the Civil List Act, 1901 (1 Ed. VII. c. 4).

Stage play is defined as *including* every tragedy, comedy, farce, opera, berletta, interlude, melodrama, pantomime, or other entertainment of the stage. But the Theatres Act does not apply to theatrical representations allowed by Justices of the Peace or any persons having authority on that behalf in any lawful fair, feast, or customary meeting of the like kind (s. 23).[3]

The Act of 1843 is primarily aimed at the conduct of theatres and their proprietors or managers. The author of the play is not named. The obligation to present a play for examination devolves on the manager and not upon the author (s. 12); and the penalties for acting a play which has not been allowed or which has been prohibited appear to fall mainly, if not solely, on the persons who cause or control the performances (s. 15).

The control over stage plays is not, however, limited to the allowance or

[1] This section is in substance a re-enactment of s. 3 of the Act of 1737.

[2] The prohibition is supposed to have been in deference to the susceptibilities of the Japanese, and took place on the occasion of a mission from Japan to King Edward VII.

[3] *Wigan* v. *Strange*, L.R. 1 C.P. 175.

disallowance of the plays themselves, but also extends to the licensing of the places in which they may be performed for gain.

Theatres.—The licensing of theatres is regulated by different Statutes from those which regulate the licensing of other places of public entertainment.

The law as to licensing places for the representation of stage plays may be thus summarised:

The Lord Chamberlain is the licensing authority for the cities of London and Westminster, and for Finsbury, Marylebone, the Tower Hamlets, Lambeth and Southwark, Windsor and Brighton, and other places where the King occasionally resides. The areas above stated are defined by the boundaries for Parliamentary purposes in 1843.

In the rest of the County of London, and in other parts of England, the licensing authority is the County Council, except in county boroughs, where the Town Council acts.[1]

The licensing authority has an administrative discretion to refuse a licence or to grant it with or without conditions. In deciding whether to grant or refuse a licence, the Council is guided by the character of the applicant and the manner in which the theatre has been conducted in the past. The licence in no way protects the licensee if objectionable plays are staged, but is merely a condition precedent to his right to perform any stage play at all.

The law as to the licensing and control of places of public entertainment other than theatres is as follows:

Under the Act of 1737 there was a monopoly in the representation of stage plays. They could only be represented in patent theatres in Westminster or by licence of the Lord Chamberlain. Under the Disorderly Houses Act, 1751, all houses, rooms, gardens, or other places kept for public music or dancing, or other public entertainment in the cities of London and Westminster, or within twenty miles thereof were to be deemed disorderly houses or places, unless they were kept by licence of the Justices for the district in which they were kept. The keepers were thereby rendered liable to indictment for public nuisance, and provision is made enabling inhabitants of the district to force the constable to undertake prosecutions (ss. 5, 6).

Under the Local Government Act, 1888, the powers of the Justices to grant licences under this Act were transferred to the County Councils of London, Middlesex, Kent, Surrey, and Essex. In 1875 the Act was amended by allowing licensed places to be opened at noon instead of at 5 p.m. (38 & 39 Vict. c. 21, s. 1). In 1894 the licensing clauses (2 and 3) of the Act were repealed as to Middlesex, but re-enacted in a simpler and more modern form, with provisions for dealing summarily with unlicensed public entertainments.[2]

[1] Under the Theatres Act, 1843, the Justices were the licensing authority. Their powers were transferred to the above authorities in 1888 (51 & 52 Vict. c. 41, ss. 7, 36).

[2] 57 & 58 Vict. c. 15.

These Acts do not apply to performances and public entertainments carried on under letters patent, or under licence of the Crown or the Lord Chamberlain (1751 s. 4), and under them no licence can be given for a stage play.[1]

But under them are licensed music-halls, in which are often given sketches falling very nearly within the definition of stage play. The proprietors of theatres, for their own protection, occasionally prosecute the proprietors of music-halls if the sketches are too dramatic. The powers of the County Council as licensing authority are wide and administrative rather than judicial in their character. They are to be exercised in the interests of public order and decency and are independent of the powers possessed in the interests of public safety.

The County Council as licensing authority has not directly to deal with particular representations ; but it has the power of annexing conditions in the grant of licences, and in the event of disorder or unseemliness, the managers incur the risk of failing to obtain a renewal of the licence, which is annual. The Council can appoint officers to ascertain the nature of the performances carried on under its licence.

There is a constant conflict between the advocates of restrictions and extreme propriety and the advocates of liberty, both represented on the licensing authority.

In 1907, in consequence of a resolution passed by the London County Council of disapproval of certain exhibitions of human statues in London, the proprietors of the halls at which the exhibitions took place withdrew the performances.

In the Home Counties the Act of 1751 to some extent overlaps other legislation applicable to all England outside the administrative County of London.

Apart from the particular provisions of local Acts, the only general provisions are those of the Public Health Act, 1890 (53 & 34 Vict. c. 59), which may be adopted for urban districts in England not lying within twenty miles of London or Westminster.

The scheme of licensing is substantially the same as in London and Middlesex, but the licences are to be granted by the Justices who are empowered to grant liquor licences for the district.

Quite independently of the statutory control above stated, proceedings may be taken at common law against persons who perform stage plays which are blasphemous,[2] seditious,[3] or obscene,[4] or under circumstances creating public disorder or obstruction to public streets.[5] The remedy is by indictment, and

[1] *Levy* v. *Yates*, 1838, 8 A. and E. 129.

[2] *R.* v. *Curl*, 1728 ; 2 Strange, 789 ; *R.* v. *Wrekes*, 4 Burr, 2527.

[3] *R.* v. *Saunders*, 1875 ; 1 Q.B.D. 15.

[4] 1. Russell, *Crimes*, 6th ed. 742 ; *Barber* v. *Penley*, 1893 ; 2 Ch. 447, 449 ; *R.* v. *Moore*.

[5] Which excepts from the privilege accorded to certain reports of public meetings or judicial proceedings blasphemous and indecent matter (51 & 52 Vict. c. 64 ; ss. 3, 4).

attended by the inevitable uncertainty involved in submitting the question of obscenity, etc. to a jury. Assuming that the representation is calculated to shock public feelings or harm the morals of the lieges, the effect of a public trial is to give the incriminated performance a larger audience than it could find on the stage, and the daily press would not be much deterred by the limitations on their privilege to report such a trial imposed by the Law of Libel Amendment Act, 1888. The allowance of a play by the Lord Chamberlain would be no defence to indictment; but matters which would be likely to provoke indictment would in most cases form ground of disallowance.

The result of the common law and of the legislation above stated may be summarised as follows:

At the present time in England there are four ways of dealing with an objectionable play:

1. If it is a new play the Lord Chamberlain can disallow it when submitted for his approval. If after such disallowance it is publicly represented for gain penalties are incurred. But a private and gratuitous performance does not fall within the terms of any existing Statute.
2. Whether a play is new or old the Lord Chamberlain may forbid its representation in the interests of good manners, decorum, or the public peace. Disobedience to the prohibition is visited by penalties.
3. When a play represented in a licensed theatre is objectionable, the licensing authority may refuse to renew the licence. The rules for theatres under the jurisdiction of the Lord Chamberlain provide against permitting on the stage profanity or impropriety, or indecency of dress, dance, or gesture, or offensive personalities or representations of living persons.
4. When a play, whether passed by the Lord Chamberlain or not, is blasphemous, seditious, or indecent, the persons concerned in its representation may be indicted at common law.

It will be seen that there is no specific provision for action by the police authorities in the English sense of that term. The business of prosecuting offences with reference to stage plays is left to the licensing authorities or to private enterprise: but the Crown can always set the police in motion on an occasion calling for their intervention—within the law.

The exact position of the law in foreign countries is somewhat difficult to ascertain. In Germany, as in the United States, the control of theatres is not matter of Federal concern. In Germany the propriety of the stage is a matter of police; but the authorities seem not to be straitlaced, having allowed a representation in Berlin of Mr. Barker's play prohibited in England. Each of the United States has its own laws about licensing theatres, but all seem to recognise the right of individuals or societies aggrieved by the moral character of stage plays to indict those responsible for them. In France a

bureau exists for the examination of stage plays; under the title of Commission d'examen des ouvrages dramatiques, but has ceased since 1905 to attempt to veto performances. The public in France is now its own censor, subject to the power of the police to intervene if the law is infringed by obscenity, personalities, or breaches of good taste.

Perhaps it would be enough to leave the statement of law above made to suggest its own conclusions. But it may be well to point out that in England the censorship is under the control of a responsible State official, in a very democratic age and country, that, judging by the plays actually represented, he is by no means squeamish, and that, on the whole, it is a less evil to aggrieve an author than to allow the more susceptible portion of the lieges to be corrupted or the more respectable to be shocked by the latest stage effects of decadent drama.

The advantage of the present system is its privacy, and any mode of public appeal against the Lord Chamberlain's decision would probably increase the area of mischief of the proscribed play.

THE INFLUENCE OF NATIONAL CHARACTER AND HISTORICAL ENVIRONMENT ON THE DEVELOPMENT OF THE COMMON LAW.[1]

[*Contributed by* The Right Hon. James Bryce, *British Ambassador to the United States.*]

The Common Law and its Qualities.—Not long ago I had occasion to read an opinion rendered on a point of law by an eminent legal practitioner in a Spanish-American country. The point itself was one which might have arisen equally well in the United States or in England. But the way of approaching it and dealing with it, the turn of thought and the forms of expression, were curiously unlike those which one would have found in any one trained in the Common Law whether in the United States or in England. This unlikeness pointed to some inherent difference in the way of looking at and handling legal questions. Many of you have doubtless had a similar experience, and have been similarly led to ask what is at the bottom of this difference between the legal ideas and legal methods of ourselves whose minds have been formed by the study of the Common Law and the ideas and methods of the lawyers who belong to the European continent or to South and Central American States. French, German, Italian, Spanish lawyers are all more like one another than any of these are to Englishmen or Americans. The causes of this difference lie far back in the past. A similar difference would have been discernible in the seventeenth century, and might indeed have been even more marked then than it is now. Two hundred years ago the law of England had already acquired a distinctive quality, and that quality has remained distinctive until now, both here and in old England, although the substantive provisions of the law have been changed in many respects by the economic and social progress which the two branches of the race have made, and by the new conditions under which those branches live. We may still with truth speak of the Common Law as being the common possession of the United States and of England, because that spirit, those tendencies, those mental habits which belonged to the English stock when still undivided have been preserved. The causes that produced them belong to a period long anterior to 1776, when the ancestors of Marshall, Kent, Story, Taney, Webster,

[1] An address delivered before the American Bar Association, August 1907.

Curtis were living in English villages side by side with those of Coke, Hale, Holt, Hardwicke, Blackstone, Eldon, and the other sages who adorn the English roll of legal fame. These causes were indeed at work far back in the Middle Ages. Just as the character of an individual man forms itself before he attains manhood, though the circumstances of his life modify it while they reveal it to others, so in those early centuries were that set of ideas and that type of mind formed which took shape in the provisions and the procedure of the old law of England. The substance of these provisions was partly general; that is, such as must exist in every organised and civilised society, partly special, such as the particular conditions of the country and the time needed. The form was due to the lawyers, whether judges, writers, or practitioners. Now, the form has greatly affected the substance, and has proved hardly less permanent. When we study the growth of the Common Law we must think not only of the rules of inheritance, the doctrine of consideration for a contract, the definition of felony: we must think also of the forms of actions, of the jury, of the authority of decided cases. All these were already well settled before the first English colonist set foot on the American continent.

What would a skilled observer select as the distinguishing qualities, the peculiar and characteristic notes of the Common Law?

First, its firm grasp of the rights of the individual citizen. He is conceived of, he is dealt with, as a centre of force, an active atom, a person in whom there inhere certain powers and capacities, which he is entitled to assert and make effective, not only against other citizens, but against all other citizens taken together; that is, as against the State itself and its organ, the Executive Government.

Secondly, its recognition of the State and the Executive as clothed with the authority of the whole community, as being an effective power, entitled to require and compel the obedience of the individual wherever and whenever it does not trespass on the rights which are legally secured to him. To be effective, law must have not only executive force behind it, but also the principle of legitimate authority, the sense in every citizen that his individual free-will has its limits, and can be exerted only within the sphere allotted to it. Liberty is the child of law. It is not his own pleasure, but the fact that the community has recognised a certain sphere of unchecked action as belonging to him, within which he can do as he pleases, that secures the citizen in his rights. Outside that sphere he must not only obey, but co-operate with the Executive. It is his duty to aid in preventing a crime, in suppressing disorder, in arresting an offender. A sheriff exercising his functions can call on all persons present to support him, and they are bound to support him, a wholesome and, if you like, a democratic doctrine.

These two principles go together. The one is a safeguard against tyranny, *i.e.* the absolute and capricious will of the governing power, the other against anarchy, *i.e.* that unrestrained and unlimited exercise

of the will of each and every citizen which must result in collision and disorder.

It may be suggested that these two principles are not peculiar to the Common Law, because no law could grow up, no State could prosper, without both of them. That is true. But there have been systems of law in which sometimes the one, sometimes the other principle, was imperfectly developed, and (so to speak) overweighted by the other. The former principle especially (viz. the recognition of the rights of the citizen) has often been quite too weak to secure due protection to the individual man. It is the clearness with which both have been recognised, the fulness with which both have been developed, in the mediæval and post-mediæval English law that constitutes its highest merit.

From the equal recognition of these two principles there follows a third characteristic. If principles apparently antagonistic are to be reconciled, there must be a precise delimitation of their respective bounds and limits. The law must be definite and exact. Now, precision, definiteness, exactitude are features of the Common Law so conspicuous that the unlearned laity sometimes think they have been developed to an inordinate degree. They have made the law not only very minute, but very technical. But of this anon.

Its Conservatism.—With the love of precision there naturally goes a love of certainty and fixity. The spirit of the Common Law is a conservative spirit, which stands upon what exists, distrusting change, and refusing change until change has obviously become necessary. "*Stare super antiquas vias*": "*Nolumus leges Angliæ mutari*": "It is better that the law should be certain than that the law should be just." These were favourite dicta among the lawyers of the old school in England.

The respect for what has been settled, and the desire that what has been settled should be definite in its terms, import a difference to precedent. No legal system, not even the Mussulman law, grounded on Koranic interpretation and traditions, has ever gone so far as the Common Law in basing itself on cases judicially determined and recorded.

Judicial decisions are given, legal precedents are made, as events bring them. There is no order among them except the chronological. Thus a law constructed out of them is necessarily wanting in symmetry. The Common Law is admittedly unsymmetrical. Some might call it, as a whole, confused, however exact may be the propositions that compose it. There are general principles running through it; but these are often hard to follow, so numerous are the exceptions. There are inconsistencies in it, where decisions apparently conflicting have been given by different authorities at different times. There are gaps in it, where no decision has happened to cover a particular set of circumstances. Thus there has been formed a tendency among lawyers to rate principles, or, let us say, philosophical and logical views of the law, very low compared with any positive declaration

made by a Court. The maxim, "An ounce of precedent is worth a pound of principle," still expresses the attitude of the profession in England, and very possibly here also.

With the love of certainty and definiteness there goes a respect for the forms of legal proceedings and for the precise verbal expression given to rules. This is a quality which belongs to most legal systems in their earlier stages. In the Common Law it held its ground with great pertinacity till very recently both in England and here; nor am I sure that it is not now strong in some of your States, possibly stronger than in the England of to-day, in which, especially since the Judicature Act of 1873, the distinctions between forms of actions are being forgotten.

You may think that among the features that characterise our Common Law I ought to name the love of justice and also the fondness for subtle distinctions. I do not, however, dwell on the latter of these, because it belongs to all legal systems that reach a certain point of development, and is even more evident in some others than in our own. The robust common sense which is inherent in the Common Law seldom encouraged fine distinctions to go beyond a certain point. As for the love of justice, it belongs to mankind generally, and to all systems of law. Such differences as may be noted between different peoples consist not in the reality of the wish to give every man his due—*suum cuique tribuere*—but in the self-control which prevents emotional impulses from overriding justice, in the practical sense which perceives that to allow the forms of law to be neglected or unusually harsh treatment to be inflicted where a cause or a person happens to be unpopular, is really to injure the community by impairing the respect for law itself and the confidence in its administration. Englishmen and Americans may claim that although, like others, they have sometimes lapsed from the right path, they have, on the whole, restrained their passions from trampling upon justice, and upon the regular methods of securing justice, better than most nations have done.

The foregoing characteristics of our Common Law are submitted for your consideration, not as being the only ones which belong to it, for others might be added, but as being characteristics so broad and salient as to make it comparatively easy to discuss them and to endeavour to account for them. Some are found in all systems that have reached a high level of scientific development, being indeed qualities without which no system could be deemed excellent. Only one other system, the Roman, possesses them in so large a measure as to deserve comparison.

A Reflection of the National Character.—To what are we to ascribe these features distinctive of the Common Law? The indwelling qualities of the race of men who built it up must have been a principal and indeed the primary cause. The mind and character of a people are indeed more exactly and adequately expressed in and through its laws and institutions than they are through its literature or its art. For books and paintings are

the work of individual men, many of whom may have been greatly influenced by foreign ideas or foreign models ; and some of whom, powerful enough to influence their successors, may not have been typical representatives of the national genius. But laws are the work of the nation as a whole, framed indeed by the ruling class, and shaped in their details by a professional class, but to a large extent created by other classes also, because (except in those few cases where a conqueror imposes his own law on the vanquished) the rules which govern the relations of the ordinary citizen must be such as fit and express the wishes of the ordinary citizen, being in harmony with his feelings and fitted to meet the needs of his daily life. They are the offspring of custom, and custom is the child of the people. Thus not only the constructive intellect of the educated and professional class but the half-conscious thought and sentiment of the average man go to the making and moulding of the law. It is the outcome of what German philosophers call the legal mind ("Rechtsbewusstsein," or legal consciousness) of a nation.

But law is the product not of one or two generations, but of many. National character is always insensibly changing, and changing more rapidly the more advanced in civilisation the nation becomes, the greater the vicissitudes in its fortunes, the more constant its intercourse with other nations. Hence institutions become the expression not solely of those original gifts and tendencies of a race or a people which we observe when it emerges from prehistoric darkness. Time and circumstances co-operate in the work. Law is the result of the events which mould a nation as well as of the mental and moral qualities with which the nation started on its career. These two elements are so mixed and blent in their working that it is hard to describe them separately. Nevertheless let us try. Let us begin by a glance at the inborn talents and temper of the race, and then see how the course of history trained their powers and guided their action.

All the Teutons are strong, resolute, even wilful ; and the Low Germans and Northmen were the most active and forceful branches of the Teutonic stock. Every man knew his rights, and was ready to assert his rights by sword and axe. Not only so, he was ready, where society had become advanced enough for Courts to grow up, to assert his rights by legal process also. Read the Icelandic sagas, in which records of killings and of lawsuits are mingled in about equal proportion, if you wish to realise how keen was the sense each freeman had of his own claims and how resolute he was in enforcing them. Never was there a people more fond of legal strife than were the Norwegians and Danes, who spread themselves over Eastern Britain in the ninth and tenth centuries, or than their brethren, whom Rolf Ganger led to the conquest of the Northern Coast of France in the ninth century. The Norman peasant is proverbial to-day in France for his litigiousness.

In this self-assertiveness, however, there is no disregard of duly con-

stituted authority. The primitive Teuton had his Folk Mot in England, his Thing in Norway and Iceland. He was loyal to his chief or king. He felt his duty to the community wherein he lived. He did not always obey the law, but he respected the law, and felt the need of its enforcement.

It belongs to a strong race to have the power of self-control. Our forefathers were fierce and passionate, like other half-civilised peoples, but they had this power, and they restrained themselves from overriding the process of law and letting passion work injustice many a time when men of other races, Greeks, or Slavs, or Celts, would have yielded to their impulses. So, too, they had a latent solidity and steadiness which indisposed them to frequent or fitful change. Compared with their Slavonic neighbours to the east and their Celtic neighbours to the west, races at least as intellectually quick and intellectually fertile, the Teutons have always been of a conservative temper. This may be—so we like to think—a mark of good sense and patience, or it may be an attribute of dogged and slowly moving minds. Anyhow, there it is, and (as already remarked) for the purposes of law-building, it is a merit of the first magnitude.

Further, the mediæval English mind was of a practical rather than of a speculative type. It had plenty of acumen, plenty of logical vigour. But it did not run to the spinning of theories or the trying of experiments. This has been characteristic more or less of the English and the American mind, and I may add of the Low German or Dutch mind, ever since, as compared with the Scotch mind and with our brethren the High Germans of the European continent. For those who were destined to create a great and complex legal system, it was an excellent quality. Speaking to an American audience, no one would venture to disparage ingenuity. The jurist needs it daily. But the jurist who is making the law needs caution and practical judgment even more; and with all your ingenuity, it has never been your way either to run ahead of actual needs or to pull up the plant to see whether the roots are sprouting.

Here, then, we have noted five characteristics of those to whom we owe the Common Law. They were strong men and pugnacious men; they respected authority; they could at need control their impulses; they were not given to change; they were not fertile in theory or invention. With these qualities they started on the work of making a law. How did the conditions of England from the twelfth to the eighteenth century affect them, and so guide their action as to bring out in the fulness of time the legal product we have inherited, a fruit very different from that which ripened under the sun of Germany or France?

The King in England the Power of Precedent.—The English King in the Middle Ages was strong, stronger than the Kings of France or Castile or Aragon. He was from the days of Henry II onwards, effective master (except for brief intervals) of the whole realm. He was able to make his executive authority feared even if it was sometimes disobeyed. His writ

ran everywhere. His Judges travelling through the country brought the law to the sight of all men.

His aim, and that of his Judges, was during the thirteenth and fourteenth centuries to build up one law, instead of the variety of the diverse customs such as had grown up in Continental Europe. Thus he and they must needs strive to make the law clear and certain. Such it became. Here and there, as in Kent and in some old boroughs, local land customs survived, yet not enough to mar the unity and definiteness of the law as a whole.

From good motives, as well as bad ones, the King was tempted to stretch his authority, and make himself almost a despot. He was so strong over against the barons that they were obliged from time to time to ally themselves with the Church—usually their antagonist—and with the middle class of small landholders and burghers. This alliance was in the interests of freedom and of a limitation of royal power. To it we owe Magna Charta, and the long line of restrictions thereafter imposed on arbitrary government. Now, Magna Charta is the declaration of one generally binding law. It enounces and consecrates, and is itself *Lex Terrae*, the law of the whole land, and of all persons therein. It is for us of the English stock the parent of all instruments defining the relation of citizen and sovereign. It is the ancestor of your own Federal Constitution, as well as of the "Bill of Rights" provisions of all State Constitutions.

Just as the barons and the people were obliged to base themselves upon the solemnly made engagement of the Crown as the evidence of their immunities, so the Crown, acting through its Judges, being not strong enough to make its own policy or view of what was right prevail as a mere exercise of the sovereign's own will, and desiring to have some positive authority to set against the texts quoted from imperial or papal law by the civilians or the canonists, was forced to rely upon acts previously done, decisions previously delivered, and to found the law upon them. Thus both parties were led to appeal to and lay stress upon precedents. The rights which the law enforced were, as usually happens in early times, much involved with the procedure for enforcing them; and the desire to secure uniformity of procedure in the King's courts led to the constant citation of judgments delivered on previous occasions. Under these conditions, and favoured by them, there grew up that habit of recording and following decided cases which is so eminently and indeed uniquely characteristic of the Common Law.

The balance of forces in English mediæval society appeared most clearly in the relations of lord and vassal. Each had unquestionable rights, and these rights were apt to come into conflict. The adjustment of conflicting claims gave constant occupation to the lawyers and the Judges, and while forming habits of exact thought and precise statement, it created a great mass of technical learning. The older English land law was indeed as intricate and elaborately artificial a body of rules as the world has ever seen. Though modified in some important points, it lasted with us until less than

a century ago, when it began to be so cut about by amending Statutes as to lose its ancient logical cohesion. For some reason, or in some way which is not clear to most of us, many of its technical doctrines were held not applicable to land in North America, so you have escaped most of the complications it handed down to us. But the process which produced it left a deep impress on the law generally. Some of the faults, some also of the merits, of the Anglo-American way of handling legal questions are due to the ancient land rights and the procedure followed in trying the issues that arose under them.

English freedom, in the particular legal form it took, sprang out of feudal conditions. In reality, it was older than feudality, and had lost some of its simple Teutonic breadth when overgrown by feudal notions. But the structure of Parliament and the right of Parliament alone to impose taxes sprang out of the relation of the King (as feudal lord) to his tenants, which is in a certain sense a private relation as well as a political one. It is hardly too much to say that what we call the public or constitutional law of England is a part of, as it has certainly grown out of, the private law. Some of our fundamental constitutional principles have been established by decisions given in private suits. And although you in America can draw a sharper line between public and private law than can be drawn in England, because you have a written or rigid Constitution and we have, strictly speaking, no Constitution at all; still, the old character of the Common Law remains plainly visible in the fact that many of the most important questions that have arisen on the construction of your Federal and State Constitutions have arisen in suits between private parties, where the primary issue before the Court was one in which the rights of those parties had to be determined.

I have referred to exactitude of thought and expression as one of the excellences which we justly admire in the sages of the Common Law and particularly in the deliverances of the Judges. That exactitude has become a feature of all our legal thinking and legal writing, and has in particular made us separate more clearly than the lawyers of some other nations do, strictly legal considerations from those which belong to the sphere of morality or sentiment. We owe it in no small measure to the old system of pleading which, slowly matured and refined to a perhaps excessive point of technicality, gave to the intellects of many generations of lawyers a very sharp edge. That system had the great merit of impressing upon them the need for distinguishing issues of law from issues of fact. The first lesson a student learns is to consider in any given case whether he ought to plead or to demur. It is a lesson of value to all of us in our daily life. Half the confusions of thought in the world, certainly not excepting the world of political discussion, arise because men have not learnt to ask themselves whether the issue is one of fact or of principle. "Do I deny the facts or do I dispute the inference? Ought I to plead or to demur?"

It is a remarkable fact that although the Common Law came into existence at a time when personal slavery was not extinct in England, and had reached an advanced state of development before prædial slavery or villenage had died out, the existence of slavery in the North American colonies had nothing to do with either English institution, but arose quite independently in colonial days. Though villenage existed at Common Law, and is said to have lasted into the seventeenth century, personal slavery does not, I think, stand recorded in any Common Law book of authority or decided case, and I suppose that the incidents of negro slavery in the colonies, doubtless practically assumed before any one thought of specific legal sanction, were either parts of the general Common Law of personal property or else rested upon Statutes of those colonies in which slavery existed. It may be observed in passing that although one might think that the recognition of the rights of man as man would be clearest and fullest in a country where every man was free, this may not in fact have been the case. Where some men are free and others are slaves, the status of freedom may have been conceived more sharply as a positive status, and the rights belonging to the individual as a freeman may have stood out more strongly, because he is legally exempt from treatment to which the slave is liable. As a freeman, he is *prima facie* the equal, as a holder of civil rights, of all other free men, even though the latter may belong to a privileged caste. The history of the Roman Law of persons lends colour to this view.

Trial by Jury.—On no feature of the Common Law did your ancestors lay more stress than on the jury, and the right of every citizen to be tried by his peers. This right had been a bulwark of English freedom, and was deemed in the eighteenth century to be essential thereto. Yet it deserves to be noticed that the jury was an institution which, in the form familiar to us, arose almost by accident. The legal genius, or instinct, of the mediæval English may, however, be credited with the use they made of this accident. Darwin has shown how a variation from a type which in its origin is accidental, that is to say, due to some cause operative in an individual organism which is beyond our power of inquiry, may become the source of a new type possessing advantages which enable it to survive and prevail and reach a higher level of efficiency than the original type possessed. So it may be not too fanciful to suggest that where a political or legal germ happens to fall in a fertile soil, the virtue of the soil enables it to spring up and become the parent of a flourishing progeny. Our ancestors moulded the jury into an instrument serviceable not only for discerning the truth but for securing freedom and justice; freedom, because it was practically independent of royal power; justice, because, although it was sometimes intimidated, occasionally even corrupted, it was usually less liable to be tampered with by those malign influences which might poison the mind or pervert the action of a Judge in days when public opinion was ill-informed or weak. We in England have no longer that confidence in the wisdom

of a jury in certain classes of civil actions which we once had, and the tendency of recent years has been to narrow the sphere of its employment. But the institution of the jury has had some notably beneficent results. Along with those rules of pleading to which I have already referred, it helped to form in us a keener sense of the need for separating issues of law from issues of fact than exists anywhere outside England and America, and has trained us how to make this distinction in every case we have to advise on or to argue. It has tended to keep judicial deliverances of the law within due limits of brevity, because when a Judge finds himself tempted to wander off into the merits of the case he is reminded that these are for the jury and that his natural human tendency to do what he thinks substantial justice must be restrained by the sense that his business is to declare the law and be content with advising the jury on the facts. It formed the practice of using at a trial, evidence almost exclusively oral, and thus, incidentally, it prevented both those secret examinations of the accused person and that recourse to torture which were common in Continental Europe. It confirmed the ancient usage of requiring judicial proceedings to be conducted in public, and thus kept subject to the watchful eye of popular opinion. And it mitigated that harshness of the penal law which belongs to all comparatively rude societies and was not removed from the English statute-book till within the memory of persons still living. When men were liable to be hanged for small thefts, English juries refused to convict for such offences, and their refusal hastened the march of legislative reform.

The mention of penal matters suggests a word as to the extreme technicality of the older Common Law. Frequently as that technicality frustrated the doing of substantial justice in civil cases, it had its advantages in criminal proceedings. Often a prisoner who did not deserve a severe sentence—and no doubt sometimes also a prisoner who did—escaped on some technical ground. The Common Law, which had the great merit of forbidding the use of torture, abominably frequent in Continental Europe even in the eighteenth century, had also the merit of forming in the legal profession the feeling that an accused person ought to have a fair run for life or freedom. A sportsmanlike instinct grew up, like that which gives the hunted deer "law" or a fair start, or that which forbids certain tricks by which a game at cricket might be won. A Judge who bullied a prisoner was condemned by professional opinion. A prosecuting counsel who overstated his case or betrayed a personal eagerness to convict the prisoner, incurred the displeasure of his brethren, and was sure to hear of it afterwards. I have often been struck in our criminal courts by the self-restraint which experienced counsel impose on themselves when conducting a case, as well as by the care which the Judge takes to let the prisoner have the benefit of every circumstance in his favour. Here one feels the tradition of the Common Law, which insisted on protecting the individual against the State.

How different things are in some parts of the European continent is known to you all. It is partly because this good tradition has been so well preserved that we have in England found that convicted prisoners need comparatively few opportunities for raising points of law after the trial. The trial itself almost always secures for them whatever justice requires, though of course there is a power of raising for subsequent arguments points reserved.[1]

Equity as Part of the Common Law.—The mediæval Common Law has been charged with one serious defect, that of lacking elasticity and the power of expansion. It halted at a certain point. It refused to deal, or perhaps I should say its machinery proved incapable of dealing, with certain sets of cases, and left them to be taken up and dealt with by the Crown acting through the Lord Chancellor. I cannot stop to inquire how far this was due to an excess of conservatism in our forefathers, how far to the circumstances of the time, which, while circumscribing the action of the King through one set of machinery, left him free to act through another. Anyhow, the result was that the huge system which we call Equity grew up side by side with the Common Law, remained distinct from it in England until the Judicature Act of 1873, and, I believe, remains, in some States and to some extent, still distinct from it in this country. In a broad sense, however, although, speaking technically, we distinguish Common Law from Equity, we may include Equity within the term Common Law, when we use it to distinguish the law of England and America from the Roman Law of the European continent, or of Louisiana and Spanish America. And it must not be forgotten that not only had Equity become thoroughly a positive system and a technical system by the time when the North American colonies were founded, but also that it had been largely influenced by the same historical environment and had been moulded by the same national character as had governed the growth of the law administered in the Common Law courts. How much of its own precision and certainty the older system had given to the younger system may be seen by whoever will compare English Equity with the civil law of most European countries in the seventeenth century.

Detachment from Foreign Influences.—I have kept to the last the most striking of all the historical conditions which determined the character of Anglo-American law. England was an island. The influences which governed the development of law in the European mainland reached her in an attenuated form. The English people had the chance of making a new start and of creating a system of law for themselves, instead of merely adopting or adapting the Roman jurisprudence, as did, at various times and in diverse ways, the French, the Spaniards, the Germans, and (ultimately and indirectly) nearly all modern peoples except those of English stock. We must not indeed exaggerate the originality of our law. It is not as

[1] However, in the present session of Parliament an Act has been passed providing for an appeal, under certain circumstances, in criminal cases.

original as that of Iceland would probably have been, had Iceland gone on developing the legal customs she had formed by the middle of the thirteenth century. It is not original in the sense of owing little or nothing to foreign sources, for a great deal of law flowed from Roman fountains into the English stream. When the Lombard Vacarius taught the Roman Law in the reign of King Stephen at Oxford—this is among the very first traces we have of that famous University—we cannot suppose that his hearers were confined to those who wished to practise in the Ecclesiastical Courts. In the next century we find Bracton, one of our earliest legal writers, copying freely from the Roman Law books, though he frequently also contradicts them when English usage differed. In the fourteenth and fifteenth centuries the Ecclesiastical Chancellors, who built up the system of Equity, were much influenced by Roman legal doctrines, drawn largely through canonist channels. Still, the fact remains that the law of England was a new creation, not an adaptation of the law of the Empire. It has a character and a quality which are all its own; and its free spirit and tendencies have always stood out in marked contrast to the despotic spirit and tendencies which France, Spain, and Germany inherited from the imperial jurisprudence. To that jurisprudence it was, during the Middle Ages and the centuries that followed, as much superior in respect for freedom and in what may be called a popular flavour as it was inferior in the philosophic breadth and elegance of the ancient sources on which that imperial jurisprudence was founded. The use of the jury, the far larger place assigned to oral evidence, the sharper separation of issues of law from issues of fact are among the most salient points in which its distinctive and individual quality appears.

I had intended to have given you a brief sketch of the earlier history of the ancient Roman Law for the sake of showing how the characteristics of that great rival system sprang from features in the national character of the Romans in their Republican days, not unlike those which marked our ancestors. They too had a genius for law. Less imaginative, less artistic, less acute in speculation, altogether less intellectually versatile and alert than were the Greeks, they had a greater capacity for building up and bringing to an almost finished and certainly unsurpassed perfection a body of legal principles and rules. They had this capacity in respect of gifts like those of our ancestors. They realized clearly the rights of the individual as against the State. They were conservative. They had the power of self-control. They were filled with practical good sense. But this great subject is too great to be dealt with at the end of an address, and I must be content with recommending it to the attention of those who are interested in these studies, as throwing much light upon the general tendencies which have governed the growth of law. The best illustrations of English legal history are to be found in Roman legal history.

I have so far been speaking of the Common Law as a product of the English intellect under certain peculiar historical conditions. But if it was

a result it was also a cause. It reacted powerfully upon the people that made it. Just as the habit of physical or mental exercise strengthens the body or the mind where native energy has made exercise enjoyable, so the Common Law, once created, began to develop further and give more definite form to those very qualities of the nation whereto its own features were due. Under its influence the national mind became more and more permeated by the spirit of legality. It grew accustomed to resist arbitrary power, but as it did this in defence of prescriptive right, it did not lapse into revolutionary ways. Thus, there was formed the idea of a government of limited powers, and the habit, when any one claimed obedience, of requiring him to show his title to demand it. If it be asked why should not such a conception of the legal character of all authority belong to, and arise in, every duly matured system of law, the answer is that the case of England stood alone in this, that the law came early to be recognized as being something more than an expression of the will of the sovereign. It sprang partly out of the old customs, partly (and more as time went on) from an assembly which was national although not yet popular. It did not descend, as in Continental Europe, from an ancient and foreign wisdom or authority. It was English. It came not from above but from all around. In England, moreover, there were among the men who knew and practised the law not a few persons of independent social standing. They were largely the lesser landholders and the younger sons or nephews of some of the larger landholders; and so they formed a link between the noble and the middle classes. Unlike the lawyers of France, those of England did not generally depend on the Crown, and they were ready on occasion to oppose it. Thus, although the people at large knew little of the details of the law, the spirit of independent legality was diffused through the nation, and legality was not the docile servant of power, as it became in countries where both physical force and the function of making or declaring the law were in the hands of the executive ruler.

How great a part the conception of the legal rights of the subject or citizen against the Crown or the State power played in English and American history is known to you all. Still less need I dwell on the capital importance for the whole political system of the United States of that doctrine of limited powers which has been so admirably worked out in your Constitutions, nor of that respect for a defined legal right which supports their provisions. The life of every nation rests mainly on what may be called its fixed ideas, those ideas which have become axioms in the mind of every citizen. They are stronger than fundamental laws, because it is they that give to fundamental laws their strength. They are, as the poet says, "the hidden bases of the hills." Now, it was mainly by the Common Law that these fixed and fundamental ideas were moulded whereon the constitutional freedom of America, as of England, rests.

The Common Law in America.—One hundred and thirty-one years have now passed since the majestic current of the Common Law became

divided into two streams which have ever since flowed in distinct channels. Water is naturally affected by the rock over or the soil through which it flows, but these two streams have hitherto preserved almost the same tint and almost the same flavour. Many Statutes have been enacted in England since 1776, and many more enacted here, but the character of the Common Law remains essentially the same, and it forms the same mental habits in those who study and practise it. An American counsel in an English court, or an English counsel in an American court, feels himself in a familiar atmosphere, and understands what is going on, and why it is going on, because he is to the manner born. You read and quote our law reports, though they are nowadays too largely filled by decisions on recent Statutes; we read and quote yours, though embarrassed by the enormous quantity of the food (not all of it equally nutritious) which you annually present to our appetite. In nothing, perhaps, does the substantial identity of the two branches of the old stock appear so much as in the doctrine and practice of the law, for the fact that many new racial elements have gone to the making of the American people causes in this sphere very little difference. It is a bond of union and of sympathy whose value can hardly be overrated. An English visitor who has himself been trained to the law can find few keener pleasures than that which my friends Lord Justice Kennedy, Sir Kenelm Digby, Sir Frederick Pollock (together with your other English legal visitors) and I enjoy in being here to-day among so many eminent members of our own profession, and in seeing how influential and how respected a place that profession holds, and has always held, in the United States. It is a bond of sympathy not least because it is a source of common pride. There is nothing of which you and we may be more justly proud than that our common forefathers reared this majestic fabric, which has given shelter to so many generations of men and from which there have gone forth principles of liberty by which the whole world has profited. The law of a nation is not only the expression of its character, but a main factor in its greatness. What the bony skeleton is to the body, what her steel ribs are to a ship, that to a State is its law, holding all the parts fitly joined together, so that each may retain its proper place and discharge its proper functions. The Common Law has done this for you and for us in such wise as to have helped to form the mind and habits as well of the individual citizen as of the whole nation. Parts of it they cannot understand; and when that is so they had better not try, but be content to seek your professional advice. But it is all their own. They can remould it if they will. Where a system of law has been made by the people and for the people, where it conforms to their sentiments and breathes their spirit it deserves and receives the confidence of the people. So may it ever be both in America and in England.

A MODERN DIVORCE LAW.

Our summary of legislation of the United States has mentioned more than one Law relating to divorce or judicial separation, and containing provisions unknown in other countries. We have received from the Government of Monaco a copy of a new Statute on the subject which goes far beyond the scope of the English law and, probably, American Statutes. To the Law of July last introduced into the Principality regulating divorce and judicial separation is prefixed an interesting *Exposé des motifs* by M. Roussel. Into the codes of the Principality have been introduced some remarkable innovations, due mainly to the present ruler or to President de Rolland. Monaco claims to be in the van of progress, to be pre-eminently a country of initiative and enlightenment. The new Law sanctions divorce; but it does much more. It strikes out a bold course along paths upon which some young communities are tentatively advancing. "L'établissement du divorce et la transformation du régime de la séparation de corps fournissent à la Principauté une double occasion de réaliser scientifiquement un progrès social." There is to be a new conception of marriage. It is not to be indissoluble; the grounds of dissolution are to be greatly enlarged. But it is not to be regarded as a contract between individuals; it is to be a "contrat social"; society is profoundly interested in its durability; the parties to it are to be guarded against their passing impulses or caprice. The cardinal principle as expressed in the report is, "La société a besoin, pour conserver et s'améliorer, de mariages unis et de familles saines." The one test to be applied in regard to State intervention is, "L'objet du mariage peut-il, oui ou non, être rempli?" The writers of the report state that the Monaco Government are not at present prepared to push to the full consequences the principle which they have adopted as their guide. But the new Law goes a long way, as appears from Article 5, the most important in the Statute.

"Lorsque l'un des époux sera atteint d'aliénation mentale, d'épilepsie, de délire alcoolique ou de syphilis, le divorce pourra être demandé par l'autre époux aux conditions suivantes:—

"1. Si la maladie est présumée incurable.

"2. Si elle est de nature à compromettre la sécurité ou la santé du conjoint ou des enfants nés ou à naître.

"3. En ce qui touche l'aliénation mentale, si celle-ci a duré trois ans avant la formation de la demande de divorce.

"4. En ce qui touche l'épilepsie et le délire alcoolique, si les crises sont fréquentes.

"5. En ce qui touche la syphilis, si elle peut être constatée chez le conjoint contre lequel le divorce est demandé, alors même qu'il ne l'aurait ni communiquée au conjoint-demandeur ni transmise aux enfants communs, et dans le cas où il l'aurait communiquée ou transmise, alors même qu'il pourrait arguer de son ignorance; toutefois le divorce ne pourra être accordé si la maladie du conjoint-défendeur, contractée antérieurement au mariage, a été avant la célébration connue de son conjoint.

"L'existence et la présomption d'incurabilité des maladies seront établies par trois médecins experts désignés par le Président du Tribunal supérieur.

"La désignation des experts sera faite, s'il y a lieu, par le Président du Tribunal supérieur aussitôt après la tentative de conciliation, laquelle, dans le cas où le divorce serait demandé pour cause de syphilis, devra être faite dans un délai de huit jours à partir de la demande."

In several other respects the Monaco law departs from the French law, upon which it is partly modelled. Thus, it does not admit the same grounds for divorce at the instance of wives as at the instance of husbands; it approaches nearer to the English law. Another deviation from the French model is with respect to remarriage; unlike the French law, it allows remarriage without restriction.[1] The Monaco Ordinance differs from some other laws claiming, as it claims to be, highly progressive: it admits judicial separation, "La coexistence du divorce et de la séparation de corps constitue un hommage décisif aux principes de l'égalité des cultes et de la liberté des consciences." The measure contains machinery for bringing about conciliation between the parties. As to this it will be noted that the law (Article 10) distinctly prohibits the presence of professional advisers.

[1] See, however, the recently passed law described in the Review of French Legislation, p. 260.

THE GREAT JURISTS OF THE WORLD.

VIII.—CÆSAR BONESANA, MARQUIS DI BECCARIA.

[*Contributed by* THOMAS RAWLING BRIDGWATER, ESQ.]

THIS eminent Italian Jurist, descended from an ancient family, was born 1735 at Milan, and died in that city 1794. Educated by the Jesuits of Parma, he was one of the first members of a literary society which was formed in Milan on the model of that of Helvétius, his elder by twenty years.

Beccaria published a journal *Il Caffè*, or *Le Café*, about 1763, after the manner of *The Spectator*, by Addison, jointly with the distinguished brothers Peter Verri, statesman and author, and Count Alexander Verri, barrister and historian, both Milanese of the same period.

The object of this Journal was to spread new ideas in Italy. The writing of these ideas led Beccaria to see the iniquities of the criminal justice of his day, and by the advice of the brothers Verri, he was persuaded to write his famous treatise *Dei Delitti e delle Pene.* This book was commenced 1763 and was published 1764. It was translated into several languages and universally admired—into French (1766) under the name of *Des Délits et des Peines*, with a commentary attributed to Voltaire, and into English (1766) under the title of *An Essay on Crimes and Punishments.*

The author of this celebrated work was not at the time quite twenty-seven years of age. Many times he nearly abandoned his undertaking, for he was easily discouraged, being of a lethargic and nervous temperament. "I owe all," he said, "to French books; they have developed in my soul the feeling for humanity previously filled with eight years of fanatical education." He frequently quoted those authors which were to him the most familiar, D'Alembert, Diderot, Buffon, Hume, Condillac, Montesquieu, Helvétius. "Their immortal works were my continual reading, the object of my preoccupation during the day and of my meditation during the night." The work of Helvétius, *L'Esprit*, or *The Mind* (wherein it was suggested that virtue and vice chiefly depended on climate), awoke his attention to all the blindness and misery of humanity.

After the completion of his writings he feared to publish them. Notwithstanding the protection he had under the administration of Comte Firmiani, he secretly published them in Livourne. In 1764 he wrote to

Pierre Verri, "If our friendship had not sustained me, I should have abandoned my project, for by inclination I prefer obscurity." He feared persecution, and often veiled his thoughts in vague, uncertain expressions.

His reply to l'Abbé Morellet, who reproached him for obscurity in some of his passages, was: "I ought to tell you that I have had before me whilst writing the example of Machiavel, of Galileo, and Giannone. I have heard the clank of the chains of superstition and fanaticism stifling the cry of truth, and the sight of this startling spectacle determined me to envelop the light in cloud. I wish to defend the cause of humanity without being a martyr."

The Essay on Crimes and Punishments appeared as the outcome of his study of French philosophy, of French rationalism, as bearing on existing penal legislation. It invoked juridical tradition, reason, and sentiment. It eloquently interpreted the protestations of the public conscience against secret procedure; against the oath imposed on the accused; against confiscation, infamous punishments: their inequality, and the atrocity of torture. It separated clearly divine justice from human justice, crimes from sins, repudiated the right of vengeance, assigned rightly the basis of punishment for general use, declared the punishment of death useless, demanded the proper proportion of punishments to crimes and the separation of judicial power from that of legislative power. Never did a book appear at a more opportune time. It had an extraordinary success; it was an event; in eighteen months from publication it passed through six editions; in a few years through thirty-two Italian editions; four editions of the English translation were issued and it was translated into most European languages. The French philosophers welcomed it with enthusiasm, as the result and to the honour of their doctrines. L'Abbé Morellet translated it; Diderot annotated it; Voltaire commentated it. It was applauded by D'Alembert, Buffon, Helvétius, Baron d'Holbach and all the *âmes sensibles*. Perhaps no book of the kind was ever received with more avidity, more generally read, or more universally applauded. There was also published a commentary, attributed to Voltaire. There is no evidence of this being Voltaire's except that of public opinion.

In 1766 Beccaria went to Paris and was received everywhere with the most lively admiration and sympathies, *con adorazione*, says Alexander Verri, who accompanied him. The visit lasted only a few weeks. Happily married to a wife he adored, and whom he left at Milan, he could not live away from her, constantly writing to her, expressing his sorrow at not seeing her, and inconsolable at leaving her. "*Souviens-toi*," he wrote to her, "whom I prefer to all Paris, the most attractive place in the world. My wife, my children, and my friends fill, without ceasing, my thoughts. Imagination, the despot of my life, leaves me to enjoy neither the spectacles of nature nor those of art, which are not wanting in this journey and in this beautiful city."

Returning to Milan, he never again left that city. His life flowed on, as he said, peacefully and in solitude. ("Io meno una vita tranquilla e solitaria.") Some passages in his book which touched on religion disturbed him, but no denunciation followed. "Le Comte Firmiani," he wrote to l'Abbé Morellet, "protected my book, and it is to him that I owe my tranquillity." He was far from being insensible to glory; he recognised that a literary reputation, liberty for himself, and a compassion for the misfortunes of mankind, were in him three sentiments equally alive, but he wished for a glory which would not disturb him or require him to sacrifice the repose and the happiness of his private life. His enthusiasm for reform fell short before this peril, and he wisely conciliated the established power.

In 1768 the Austrian Government, hearing that Beccaria had refused the offer of Catherine II to live in St. Petersburg, created in his favour, at Milan, a chair of political economy. He was induced by this honour conferred on him to publish some work upon this subject. He had the satisfaction in seeing during his life the introduction into legislation of the principles that he had proclaimed. He took part in 1791 in the Milanese Commisson instituted for the reform of civil and criminal procedure.

L'Abbé Morellet, the translator of Beccaria's great work, said that its author was actuated by true sentiment, love of literary fame, love of liberty, and compassion for the unhappy condition of mankind enslaved by so many errors. "Beccaria," said M. Villemain, "had a sensible and generous heart, rather than a far-seeing mind; a man full of ideas. One owes to the author of *The Essay on Crimes and Punishments* an everlasting recognition, though his work could not be considered as that of a genius."

"Beccaria," said M. Mougin (*Encyclopédie Nouvelle*), "was never a thinker. He was confused by an equal admiration for two different men, Helvétius and Montesquieu. Between these two different men, he himself (their pupil) said he could see no distinction—to him they were both philosophers. In these two lives he saw only their feeling for humanity and a tenderness for every one. He could not fathom their assertions, often diverse and contradictory, either in the germ or developing. His work was not one of original thought, of learned and profound thought, which one expects to find in Beccaria."

"The age in which Beccaria wrote," said M. Lerminier, "was one in which the rights of humanity (before ignored and violated) were suddenly and quickly sought to be established. The science of criminal law was without scientific character, and met with general opposition. It was a period when, in the pursuit of such a reform, talent was genius, and courage was talent—one who took the lead was certain to receive the esteem and admiration of his contemporaries. Beccaria published his *Essay on Crimes and Punishments* not as a scientific work, but as a zealous pamphlet, which showed the enthusiasm of his opinions."

Another writer says: "These appreciations do not seem to render sufficient justice to Beccaria. All the world now recognises that Beccaria took up the reform of penal legislation, which he pleaded with a luminous reason, an eloquent passion, and won almost immediately an honour no one could share with him. The rapidity of his success seemed to diminish his merit. It was at the same time his good fortune to formulate the sentence pronounced at a later period, by the public opinion of all Europe against existing judicial institutions. Is that the idea we ought to have of Beccaria? Has his book only been negative, or destructive, or revolutionary? Ought one to consider his 'Essay' as a mere pamphlet, that is to say, a mere incident? It is a work in all the acceptance of the word. For Beccaria was not born to destroy the ancient edifice of a legislation previously so odious. He dug the foundations of a new edifice, he fashioned the material, he traced the plan. *The Essay on Crimes and Punishments* is one of the books of the eighteenth century from which one can even at this day draw some lessons. One must not forget that Beccaria was the first publicist to question the law as to the punishment of death. His name will ever be associated with the idea of the suppression of the scaffold. Whatever objection there may be to this idea, one must always recognise that Beccaria was brave and original enough to proclaim—in the face of legislators who maintained a vigorous belief to the contrary, and of philosophers who justified it, and of all history, which proved that the punishment of death was applied everywhere and at all times—that this punishment exceeded the right of the legislator and the Judge; in one word, he denied their right, in the name of the human heart—that source of all great thoughts (according to Vauvenargues) of the past, of the present, and until cold reason appears to repress it, also of the future.

After this is it true to say that societies for the promotion of that principle and the social philosophy of the eighteenth century owe nothing to Beccaria? Was he not, as he said of himself, in the track of the French philosophers? He did not work his thoughts in new ways, he worked upon the lines of the old masters. He accepted without dispute the 'contrat social' of Rousseau. He supposed, like Rousseau (and by so doing followed in the same stream of ideas where Rousseau and Helvétius had given him the lead), that this contract was founded on social grounds, derived from a common want, a common interest. Like Voltaire, Beccaria saw in the religious institutions of humanity nothing but the politics of legislators, the work of daring men, which deceived others, who, like themselves, trained the ignorant to follow in their steps."

Another writer says: "When the 'Essay' appeared Beccaria was stamped with that immortality which belongs only to geniuses, born to be the benefactors of their times. *Quique sui memores alios fecere merendo*, never before did so small a book produce so great an effect, never were truths

so consoling and sacred compressed into so small a space. Innocence and justice, human liberty and social peace were shown to the world welded into one indissoluble link. The origin, the basis, and the limits of the right to punish were presented in such a manner impossible to be ignored. The legislator knew that he should not pronounce judgment, and the Judge that he should only interpret the laws."

Mr. Dumont wrote in 1811: "Beccaria first examined the efficacy of punishments by considering their effect upon the human heart; by calculating the force of the motives by which individuals are impelled to the commission of crimes, and of those opposite motives which the law ought to present. This species of analytical merit was, however, less the cause of his great success than the courage with which he attacked established errors, and that eloquent humanity which spreads so lively an interest over his work"; after this, says M. Lunefont, "I scruple to say that he is destitute of method, that he is not directed by any general principle, that he only glances at the most important questions, that he carefully shows all practical discussions in which it would have been evident that he was acquainted with the science of jurisprudence. He announces two distinct objects: Crimes and Punishments; he adds to these occasionally Procedure; and these three vast subjects with difficulty furnish matter for one little volume."

The editions of this work, not more than two hundred pages, including the commentary attributed to Voltaire, multiplied rapidly. In Italy three editions were sold in the first six months, and three more the following year. It was translated into French (1766) at the instance of Malesherbes, by l'Abbé Morellet, who brought into this work his passionate interest for human misery, and arranged the different parts of this fine work in an order he judged suitable, and approved by Beccaria.

M. Challon de Lisy published a second translation, and in 1797 a second edition of Morellet's translation appeared with notes by Diderot, together with St. Aubin's translation of Bentham's *Theory of Penal Law*. In Prussia, in Russia, and in Tuscany, the sovereign and the people honoured the man who was at the time the defender of the safety of subjects and of the stability of Governments. Catherine II of Russia had the "Essay" translated and inserted among her new Code of laws, abolished torture in her dominions, and accompanied the abolition by an edict of toleration. Frederick of Prussia and Duke Leopold of Tuscany took the same step. The movement that destroyed torture was an emotional one rather than an intellectual one. Joseph II of Austria soon after abolished, with few exceptions, the punishment of death throughout his dominions. The administration of Berne ordered a medal to be coined in Beccaria's honour. Coray translated the "Essay" into Greek and published it in 1802. Lord Mansfield, it is said, never pronounced the name of Beccaria without a visible sign of respect. So great a success, even though it was in the

interests of humanity, was not exempt from attacks of envy and fanaticism. These attacks were brought against him in Milan, accusations of impiety and sedition. The powerful influence of Count Firmiani alone protected him, declaring that the author and his work were under his protection, he had created for him in Milan the chair of political economy, and when it was established Beccaria endeavoured to teach those who had formerly planned his ruin. Beccaria's other important works were: *On the Disorder of Money in the State of Milan and the Means of Remedying it* (1792), *Researches upon the Nature of Style* (1765), an ingenious reflection upon the formation of languages—where the author alluded to two principles—the *expression* of pleasure and of sorrow and the imitation of objects. It was printed in his Journal *Le Café* and translated (1771) by l'Abbé Morellet; *Discourse upon Commerce and Public Administration* (1769); translated by Antoine Comparet; *Report upon a Project of Uniformity of Weights and Measures* (1781).

A hundred years after the publication of the *Essay on Crimes and Punishment*, Cæsar Cantù, a learned Milanese historian, published a work called *An Essay on Beccaria and the Penal Law*. This work appeared in Italian in Florence in 1862. In this long and complete monograph Cantù first examined the earlier state of penal legislation before the time of Beccaria; the prisoner, his punishments in Italy, and especially of the Milanese at that period, and of torture previous to and since the Christian era. He cited the most important Roman authorities upon penal law and torture, and mentioned the most ancient works which he had read on the applications of that punishment. He cited the work of Martin Bernard, which reverted to the early times of Christianity, *La Tortura ex foris Christianorum proscribenda*, and a jurisconsult Grœvius who, before Beccaria, had shown their iniquity. The authors he cited in this work are innumerable. There is not a criminologist of the least distinction whom he did not bring to light. Cantù, after he had written the history of Beccaria's great work, demonstrated the doctrines of the Encyclopédistes, the social contract, the system which gave society the right to defend itself, which forms the basis of law, and the foundation of punishment.

Passing from the theoretical to the practical, Cantù reviewed and criticised the reforms which were accomplished under the influence of Beccaria's book, and, approaching the theories and modern application of the criminal law, he appreciated with a profound suggestion the juridical strength and philosophy of Beccaria's work. In his appreciations of the law of punishment, Cantù was inspired by some clearer principle, and criticised the theories of Beccaria founded upon the system of the origin of society, such as were conceived by the philosophers of that period. He reproached Beccaria for resisting the interpretation of the law, enumerating the cases where this interpretation was perhaps useful and necessary, noting at the same time the economical errors of Beccaria. He nevertheless assigned him

his true place in the reform of criminal jurisprudence, and concluded that if Beccaria was not quite the first to demand reform, the glory of accomplishment was at least his alone. In a word, Cantù admires and criticises at the same time.

Beccaria's work was not intended to be a complete system of penal law; it was mainly directed against the most flagrant errors and abuses of contemporaneous legislation, particularly against the abolition of torture and the punishment of death. These two forms of punishment previous to the days of Beccaria were the chief and largely the only forms of punishment. Two of his objections to the punishment of death were—that as a deterring example execution lasts so short a time, whereas perpetual slavery (his mode of punishment for the greatest crime) affords a more lasting example, and that capital punishment is too great an example of barbarity. "If," he wrote, "the passions or necessity of wars have taught men to shed the blood of their fellow-creatures, the laws which are intended to moderate the ferocity of mankind should not increase it by the example of barbarity, the more horrible, as this punishment is usually attended with formal pageantry." It was to his impressive style, his lively eloquence, that the author of the famous "Essay" owed his success, and the diffusion of his principles to the animated style in which he appealed to the feelings of mankind.

Bentham, writes Mr. C. M. Atkinson, followed Beccaria, and denounced, as a false principle that had long reigned a tyrant throughout the best province of penal law, this "reasoning by antipathy," as he phrased it; for it is but an irrational subjection to the blind impulses of anger and revenge which have in all ages obscured the vision of judges and legislators.

Bentham (1747-1832) was a contemporary of Beccaria, who is said to have stated during different periods of his life that he took the "Greatest Happiness" principle from Hume, Montesquieu, Barrington, Beccaria, and Helvétius. Bentham had noted in his commonplace book that Priestley was the first (unless it was Beccaria) who taught his lips to pronounce the sacred truth that "the greatest happiness of the greatest number is the foundation of morals and legislation."[1]

According to M. Halévy, Beccaria sketched the ideas in outline, but did not approach Bentham either in vigorous definition of the principles or in the systematic development of their far-reaching consequences. Bentham, says Professor Montague, grasped with astonishing firmness axioms which Beccaria had merely indicated with the light touch of an essayist.

W. E. H. Lecky, reviewing the effect of Beccaria's work upon torture, says:[2] "In Italy, the great opponent of torture was Beccaria. The movement that destroyed torture was much less an intellectual than an

[1] *Bentham, his Life and Work*, by C. M. Atkinson, Stipendiary Magistrate for Leeds. pp. 30, 31, 36, 160, 161.

[2] *Rationalism in Europe*, vol. i. p. 331.

emotional movement. It represented much less a discovery of the reason than an increased intensity of sympathy. There is perhaps one exception to this. Beccaria grounded much of his reasoning on the doctrine of the Social Compact. I cannot, however, think that this argument had much influence in producing the change." Reviewing its effect on the Penal Code he says[1]: "The reform in England, as over the rest of Europe, may be ultimately traced to that Voltarian School of which Beccaria was the representative, for the impulse created by the treatise *On Crimes and Punishments* was universal, and it was the first great effort to infuse a spirit of philanthropy into the Penal Code, making it a main object of legislation to inflict the smallest possible amount of suffering. Beccaria is especially identified with the cause of the abolition of capital punishment, which is slowly but steadily advancing towards its inevitable triumph. In England the philosophic element of the movement was nobly represented by Bentham, who, in genius, was certainly superior to Beccaria, and whose influence, though perhaps not so great, was also European."

Howard the philanthropist (1726-1790), also a contemporary of Beccaria and Bentham, advocated the abolition of capital punishment. Howard's pilgrimages to improve the prisons of Europe and Bentham's writings added to and aided the great objective principle laid down by Beccaria.

Before concluding this article it may be interesting shortly to review as far as possible the effect of Beccaria's small but far-reaching literary work relating to the two great principles he laid down. As regards torture, as meant and understood by Beccaria, it may be said to have entirely disappeared, so far as occidental countries are concerned. Capital punishment still remains, but in a greatly modified degree since the days of Beccaria.

Filangieri (1752-1788), a Neapolitan barrister, also a contemporary of Beccaria, published in 1782 his great theoretical work the *Scienza della Legislazione*, and carried into effect a general reform in the legislation of his country. This work went through many editions, translated and published in Germany, France, Spain, and America. Filangieri does not advocate the total abolition of capital punishment, but limits the infliction of death to a few crimes, viz. murder with intent after cold-blooded deliberation (*a sangue freddo*), treason, and high treason. The immediate effect of Beccaria's teaching was first to be found in his own country. The first Government to be impressed with Beccaria's views was that of Tuscany.

The Grand Duke Leopold abolished the punishment of death (1786). The preamble of his Act asserts that it had not been inflicted in Tuscany for fourteen years before (1772), Beccaria's essay having been published (1764). In Germany—the Germany of the eighteenth century—the first example was set in Austria. The death sentence could not be passed without the special mandate of the Emperor Joseph II (1781). It was actually abolished (1787). It was limited in Prussia (1788). In Bavaria, Feuerbach, the author of its

[1] *Rationalism in Europe*, vol. i. p. 349.

Code, following his own penal theory, considered that the temptation to the grossest crime ought to be checked by a death penalty.

In France Beccaria's ideas were received with approval before the Revolution (1790), and it was moved in the National Assembly that except in political subjects the death penalty should be abolished. Robespierre spoke in favour of its abolition. Condorcet, after the execution of Louis XVI, moved (1793) that the death penalty should be abolished for all crimes. Both these measures were lost.

In America the Quakers specially endeavoured to make capital punishment unlawful, and in the Pennsylvanian legislature (1794) the death penalty was limited to murder. The above merely shows the effect of Beccaria upon the century which produced Beccaria.

The effect on the nineteenth century it would be too long now to follow. We must always recognise in the last century the great work of Sir Samuel Romily, who drew his inspiration from Beccaria, and induced Parliament to mitigate the extreme severity of the English Penal Code. With his name and exertions in the past century there will ever be remembered the names of other illustrious penal reformers from Sir James Mackintosh to Charles Hopwood. In concluding this article, and for the purpose of comparative legislation, we enumerate some of the European countries which have now abolished, or partially abolished, capital punishment as a record of the law existing at the opening of the twentieth century.

Italy.—It was abolished by the Penal Code of 1889, previous to which date for a long period it was commuted to penal servitude for life. It has been retained in the Army and Navy Penal Law.

England, India, and the Colonies.—Punishment by death abolished in a great number of cases (1824-29). Abolished, except in wilful murder and treason, and chiefly commuted to penal servitude for life by the Criminal Law Consolidation Acts, 1861. Commission on Capital Punishment recommended penal servitude in cases of unpremeditated murder and that executions be private (1865). Abolition of death penalty debated in House of Commons at different times (1868-1886).

United States.—Practically abolished; entirely abolished in some States: Maine, Rhode Island, Wisconsin.

Germany.—Practically abolished in Prussia and Bavaria; abolished in Saxony (1868).

Belgium.—Save in one exception in 1866, during the present King's reign, begun in 1865, no capital punishment has taken place, though the law exists. Sentence is commuted into penal servitude for life.

Denmark.—It exists against premeditated homicide and crimes against the safety or independence of the State or Constitution. It is, as a rule, commuted.

France.—Practically abolished: four executions in 126 convictions in one year.

Netherlands.—It has been abolished since 1870.

Norway.—No capital punishment since 1876. It is decreed by the Code.

Portugal.—No capital punishment exists except for criminal and military offences since 1867.

Russia.—There is capital punishment only for attempts against the life of the Chief of the State, or for treason or sedition against the State.

Sweden.—During ten years, 1801-1900, four persons were executed.

Switzerland.—Abolished in seventeen out of twenty-one cantons.

Well may it be said of the Marquis di Beccaria, looking at these results of his "Essay," that it is indeed one of the most important Works that has ever been written, and that he, by writing, has contributed towards the enduring happiness of nations.

BILLS OF EXCHANGE AND THE INTERNATIONAL LAW ASSOCIATION.

[*Contributed by* THOMAS BATY, ESQ., D.C.L.]

IN a recent Article in the *Journal of Comparative Legislation*, some uncertainty was evinced with regard to the genesis and authority of what are termed the "Bremen Rules" purporting to provide a terse statement of principles for the unification of the law relating to Bills of Exchange. Fortunately, the matter is not yet such ancient history that it cannot be satisfactorily and conclusively cleared up. The Bremen Rules appear to provide, in short compass, a *via media* for the conciliation of the German and English systems, between which the writer of the Article ably indicates the grave divergences. So successfully do they perform this function, that he is led to doubt their British origin, which is inferred, on the other hand, to exist from the fact that they "are said to be the work of the International Law Association."

It may be said at once that these Rules are certainly the work of the International Law Association: the slight sketch of their history which follows will show whether that is the same thing as their being of English origin, while it will at the same time demonstrate that the supposed repugnance of English lawyers to Continental principles of *Wechselrecht*, if it existed, was very successfully overcome. It may be gathered from Mr. Byles' Article that he is sceptical as to the prospects of any attempt to conciliate German and English ideas in this matter. The history of the Bremen Rules shows that it was practically accomplished thirty years ago.

The initiative in the matter was taken by the late Mr. H. D. Jencken. At the second Conference of the Association (Geneva, 1874), he read a paper on the "International Law of Negotiable Securities, and the desirability of codification of the laws of different countries respecting the same," and a special committee was appointed to consider it. The Committee reported in 1875, and at the Conference held that year (at the Hague), the report was referred to the following enlarged committee: Sir Travers Twiss, Mr. Joseph Brown, Q.C.; Messrs. Jencken and J. R. Bailey (London); Dr. W. G. Blackie (Glasgow); Drs. Borchardt and Zimmermann (Berlin); MM. Couvreur and Corr van der Maeren (Brussels); Judge Dillon (Iowa); Prof. Goss (Copenhagen); Dr. Bredius (Dordrecht); Drs. Jaques and Strauss (Vienna). On their recommendation a regular Commission was nominated,

representing twelve nations. Its members were Twiss, Borchardt, and Jaques, with Guillery (Belgium), Massé (France), Vidari (Italy), Hovy (Holland), Pruyn (U.S.A.), and co-opted members for Portugal, Russia, Spain, and Scandinavia; Messrs. Jencken and Bailey acting as Secretaries. This Commission reported in 1876 at Bremen, the report being drawn up by Jaques and Borchardt.

In discussing the report, Mr. Jencken traced the growth of the French, German, and Anglican systems, and frankly expressed a preference for the second. Dr. Jaques followed, and there also spoke Sir T. Twiss, Dr. Borchardt, Dr. Krieger, Mr. Meier, Dr. Hinschius, Mr. Murray (Faculty of Procurators, Glasgow), Prof. Aubert, and Mr. Hinde Palmer, Q.C. The twenty following clauses were adopted; and these are substantially the "Bremen Rules":—

1. The capacity to contract by means of a Bill of Exchange shall be governed by the capacity to enter into an obligation generally.

2. To constitute a Bill of Exchange it shall be necessary to insert on the face of the instrument the words "Bill of Exchange," or their equivalent.

3. It shall not be obligatory to insert on the face of the instrument, or on any indorsement, the words "value received" nor to state the consideration.

4. Usances shall be abolished.

5. A Bill of Exchange shall be deemed negotiable to order, unless restricted in express words on the face of the instrument or on an indorsement.

6. The making of a Bill of Exchange to Bearer shall not be allowed.

7. The rule of law of *distantia loci* shall not apply to Bills of Exchange.

8. A Bill of Exchange shall be negotiable by blank indorsement.

9. The indorsement of an overdue Bill of Exchange which has not been duly protested for dishonour for non-payment shall convey to the holder a right of recourse only against the acceptor and indorsers subsequent to due date. Where due protest has been made, the holder shall only possess the rights of the indorser to him against the acceptor, drawer, and prior indorsers.

10. The acceptance of a Bill of Exchange must be in writing on the face of the Bill itself. The signature of the drawer (without additional words) shall constitute acceptance, if written on the face of the bill.

11. The drawer may accept for a less sum than the amount of the bill.

12. The cancellation of a written acceptance shall be of no effect.

13. No days of grace shall be allowed.

14. The holder of a Bill of Exchange shall not be bound, in seeking recourse, by the order of succession of indorsements, nor by any prior election.

15. Protest, or noting for protest, shall be necessary to preserve the right of recourse upon a Bill of Exchange dishonoured for non-acceptance or for non-payment.

16. Default of notice of dishonour for non-acceptance or non-payment shall not entail upon the holder or other parties to a Bill of Exchange the loss of their right of recourse for the amount of the bill; but the defaulting party shall nevertheless be liable for any damage occasioned by such default.

17. The time within which protest must be made shall be extended in the case of *vis major* during the time of the cause of interruption, but shall not in any event exceed a short period of time to be fixed by the Code.

18. No annulling clause need be inserted in duplicates.

19. A simultaneous right of action on a Bill of Exchange shall be allowed against all or any one or more of the parties to the bill.

20. In the foregoing Articles the term Bill of Exchange shall include Promissory Note, where such interpretation is applicable; but "Promissory Note" shall not apply to Coupons, Bankers' Cheques, and other similar instruments in those countries where such instruments are classed as Promissory Notes.

Since this Conference was held in Germany, it may be thought to be liable to the operation of Mr. Byles' canon that conferences, like chameleons, take the colour of their surroundings. But Sir Travers Twiss observed that ". . . a sound basis for further operations had been secured. When the final report was presented at the next Conference he hoped that it would meet with general recognition, and that an International Law would ultimately be the result." It is true that the Americans were detained at home by centennial festivities, whilst the Belgians appear to have also had domestic engagements. But the British attendance included Dr. Birkbeck (Cambridge), Prof. Sheldon Amos, Dr. (Sir Thos.) Barclay, Mr. (Sir John) Macdonell, Mr. Hinde Palmer, Mr. Henry Richard, Mr. Murray, and many others.

At Antwerp, in 1877, Lord O'Hagan (Chancellor of Ireland), in addressing the Association as its President, observed:

For many years there has been a growing conviction amongst jurists and mercantile people of intelligence that there should be a common code and a uniform usage with reference to Bills of Exchange, for the nations of Europe and the States of America. The advantage of such a Code and such a usage, if they could be established, does not appear to me to need exposition in an assembly of reasonable men. The complications, the difficulties, the errors, and the losses which arise from the want of them are of every day's experience in commercial affairs.

That the change is practicable seems nearly as plain as that it would be of inestimable advantage. All nations in which such instruments are employed for the purposes of commerce have a common interest in making them, by a simple, speedy, and universally intelligible procedure, promptly negotiable and easily convertible. A great American jurist has truly said that "the jurisprudence which regulates Bills of Exchange can hardly be deemed to consist of the mere municipal regulations of any one country. It may, with far more propriety, be deemed to be founded upon and to embody the usages of merchants in various commercial countries and the general principles, *ex æquo et bono*, as to the rights, duties, and obligations of the parties derivable from those usages and from the principles of natural law applicable thereto." Those principles are not bounded in their operation by the limits of any nation. They are equally applicable to all, and furnish the means of a profitable concert in which all may find unqualified benefit.

And Lord O'Hagan adverted to the fact that the Presidents of the Joint Scandinavian Commissions—Klein, Bergström, and Aubert—were members of the Association, and that they had substantially adopted the "Bremen Rules." Incidentally the Lord Chancellor informs us that the Committee had circulated several thousand copies of a *questionnaire* among jurists, bankers, and merchants, and had digested the answers which had largely been returned.

At this Conference six additional Articles were presented.

1. The validity of a Bill of Exchange shall not be affected by the absence or insufficiency of a stamp.

2. In case of dishonour for non-acceptance or for conditional acceptance, the holder shall have an immediate right of action against the drawer and the indorsers for payment of the amount of the bill and expenses, less discount.

3. Where the acceptor shall have committed an act of bankruptcy before due date, the holder shall have an immediate right of action against the drawer and indorsers for payment of the amount of the bill and expenses, less discount.

4. The surety upon the bill (*donneur d'aval*) shall be primarily liable with the person whose surety he is.

5. The period for the limitation of actions upon a Bill of Exchange shall be three years from due date as against the acceptor, and eighteen months from due date as against the drawer and indorsers, any agreement to the contrary upon the bill itself notwithstanding; and the same rules shall apply to their respective sureties upon the bill (*donneurs d'aval*).

6. The capacity of a foreigner to contract by means of a Bill of Exchange shall be governed by the law of his country; but a foreigner who enters into a contract of exchange, being incapable of binding himself by such a contract in his own country, shall be bound, if he is capable of binding himself, by such a contract under the law of the country in which he contracts.

All were accepted without debate except Nos. 3 and 5. The former was carried, the latter postponed. These extra rules were drawn up by Sir T. Twiss, Dr. Hindenburg (Copenhagen), Dr. Hovy and Dr. Borchardt, with the assistance of Mr. Condert (N.Y.), Prof. de Folleville (Douai), Dr. Sieveking (Hamburg), Mr. Meier (Bremen), Dr. Bredius (Dordrecht), Mr. Wendt, Mr. Jencken, and Mr. Bailey (London). We may probably assume them to have concurred in their recommendations.

In the next year (1878) the Association met at Frankfort, and the Committee, through Dr. Borchardt, again reported. They referred in detail to the Scandinavian Joint Commission, six out of the nine members of which belonged to the Association, and which, in its official Report, had observed that uniformity in this branch of law, if distant, must be materially "accelerated by the energetic, thorough, and conscientious labours of that Society." The Commission had estimated the "French" and "Anglo-American" groups to contain about 270 millions of people each, the "German" 75 millions. "Nevertheless," it had added, "the German Law, worked out as it is in accordance with the most modern principles, appears to be the most practical, and it need not be matter for surprise that the often-named Association has shown a leaning towards it." Dr. Borchardt regarded the moment (the Treaty of Berlin had just inaugurated an era of peaceful development) as propitious for a combined effort on the part of the commercial world in this matter, and he observed that the Governments of Germany, Austria, and the United States of America were anxious for a unification law, and that the Government of Great Britain was not otherwise than favourable to the proposal.

The eighteen-months limitation clause was then put forward, and another clause safeguarding the owner of a lost bill if duly protested for want of payment. These proposals were carried; also one substituting, for the rule as to notice of dishonour, the following:

Immediate notice of dishonour shall be necessary to preserve the right of recourse upon a Bill of Exchange.

The Conference of 1879 was held in London. It was presided over by Sir Robert Phillimore, and offered an excellent opportunity for the correction of the Germanism of the Bremen Rules. It was not thought necessary to take any step of the kind. Borchardt, speaking in the Guildhall, the centre of English commercial life, reminded the Conference that Great Britain "had the largest interests involved, and was not wont to be behindhand when there was good practical work to be done"; and he moved that the Chambers of Commerce and the Institute of Bankers of Great Britain should be requested to co-operate in the movement.

This proposal was seconded from India. The Hon. A. Mackenzie, specially delegated by the Bombay Chamber of Commerce, performed this function. It will be noticed that it expressly committed the Association to the Bremen Rules, and to their presentation to the commercial community. Was any voice raised in objection to their un-English character in the heart of London? So far as appears, not a single one.

Nothing was done in the matter at Berne in 1880, Dr. Borchardt (who was Costa Rican Minister at Berlin) being on his death-bed; and towards the end of 1881 Mr. Jencken also died. At the Conference at Cologne in the latter year the subject had again been much discussed. A paper by the then Swedish Vice-Consul in London was presented, in which the new Scandinavian Code was set out with illuminative comparisons with various foreign laws. Mr. Jencken had then moved for a committee to communicate with the Board of Trade; and Sir Horace Twiss, Mr. Wendt, and he had been appointed to serve on it.

From this time the subject disappears from the records of the Association's work. The unfortunate demise in the same year of the two jurists most keenly interested in the matter no doubt gave the *coup de grâce* to the propaganda. Still, there the matter stands. The rules, if formulated in Germany, were formulated with the concurrence of eminent English jurists. They were officially recommended to the English commercial public by a conference sitting in London. After the lapse of a quarter of a century they are again put forward as a reasonable basis of compromise. To pursue the Chinese policy of exclusion by the maintenance of fetters on commerce such as are inevitably forged by vital differences of law in the commonest affairs of mercantile life may be dictated by a momentary jealousy, but it cannot long last as a policy. In Italy and in Germany, Governmental authority has been given to the efforts for unification, which

are now so energetic and well-directed. It can hardly be supposed that anything but good could arise from freer and safer dealings with foreign Bills.

At the Conference held by the International Law Association in 1906 at Berlin, the matter re-appeared on the list of topics discussed. Dr. Meyer's valuable monograph was widely circulated among the members present. The Berlin Merchants' Guild, on whose initiative it was prepared, are old members of the Association; and their President, Stadtältester Kämpf, made an earnest appeal that the consideration of the subject should again be seriously resumed. Sir Thomas Barclay spoke in support of the proposal; and a resolution proposed by Dr. Meyer, and seconded by Sir Thomas, was unanimously carried, expressing the sympathy of the Conference with the project of a uniform law of Bills of Exchange, and requesting the Council of the Association to take steps to further that object. During the discussion an American member made the following statement, which shows that Anglican Law has gone far towards meeting German, in America :—

"This matter of the unification of the law with regard to bills and notes was taken up by the American Bar Association : a draft was made and was adopted by the majority of the States of the United States. I wish to say to the German members that we derived great benefit in drawing the law on bills and notes from the most excellent commercial Code of Germany, and it is in many respects very similar to the German Law."

It may be hoped that the question may again be taken up by the Association, which, comprising business men as well as lawyers, is well fitted to conciliate legal and lay opinion. Its forthcoming Conference in Hungary next autumn would provide a very favourable opportunity.

One would be glad if any one could suggest a better title for the "oddly named" Bremen Rules. The only reason for their being called so is that they were adopted at Bremen.

THE CODE OF CIVIL PROCEDURE IN INDIA.

[THE following remarks are contributed by an Anglo-Indian writer who, in common with many other officials, was, when in India, consulted on the Bill of 1901 and has had good opportunities of understanding the "objects and reasons" of the Bill of 1907.]

"Although preparation for Indian Codification began in the early 'thirties of last century, all the Indian Codes belong to the period since the Mutiny, when we had already been a sovereign power in the country for a hundred years. The very first Code to appear was that relating to Civil Procedure, passed in 1859, and quickly followed by the Penal Code in 1860 and the Code of Criminal Procedure in 1861. The Civil Procedure Code of 1859, which had been intermediately amended, was superseded by a new Act in 1882; and that Act is still in force, though up to the end of 1901 it had been amended by no fewer than seventeen Acts of general and seven of local application. It is also thickly encrusted with the Case-law of a vast number of decisions.

"The revision of the Code of 1882 has been under consideration since 1893. A Bill for the purpose was introduced in Council in 1901, and widely circulated for opinion. Masses of criticism were obtained from all parts of India and were referred to a Select Committee, who submitted their Report in March 1903. Unfortunately the Report was, on a good many points, not unanimous; and much of the criticism was not favourable. The Bill of 1901 has been withdrawn; and the Hon. Mr. Richards, the Law Member of Council, in asking leave to withdraw it, said, without committing himself to any exact opinion of the criticisms, that it had been alleged 'that the Bill was too ambitious in its aims; that it sought to provide for every detail of procedure and to meet every possible contingency; that it attempted to embody the effect of an excessive number of decided cases.'

"The Bill which has now been introduced to take the place of the rejected measure proceeds on entirely right lines; and the Government of Lord Minto is to be heartily congratulated on having inaugurated a most important judicial reform. The Code of 1882 contains 680 sections, which were expanded to nearly 800 in the revised Bill of 1903. This includes,

in both cases, lettered sections or clauses marked A, AA, B, C, D, etc. Thus the Act of 1882 was neither shortened nor simplified. The body of the Bill of 1907 includes 155 clauses only. But its framers have not forgotten that the multitudinous Courts of every degree of judicial training, acumen, and experience, working throughout a vast empire, will need, on many points, detailed guidance—always, however, with the possibility of local variation. The present Bill limits the Code itself, excluding Schedules, to (1) fundamental principles which regulate the conduct of suits from institution to the last permissible appeal, and (2) matters in which the influence of external administrations touches the procedure of British Courts, such as foreign judgments, the execution of decrees passed by the Courts of native States and suits by or against ruling chiefs in India.

"The minute provisions required for daily practice are relegated to scheduled rules. The attempt to deliver a digest of decisions has been abandoned; Case-law amendments have been confined to points on which there have been conflicts of authority. The language of the Code—so often the subject of judicial interpretation—and the details in the scheduled rules have been treated in a commendably conservative spirit; so that what is, in one aspect, a re-arrangement of the existing law, with necessary amendments, should not cause any breach of continuity. Of course the renumbering of sections must occasion some inconvenience; but this will be a passing one. The machinery for dealing with the rules seems excellent. The several High Courts and the Chief Courts of the Punjab and Burma are empowered to make rules for any matters relating to the procedure of the Civil Courts; but the rules so made must not be (1) inconsistent with anything in the body of the Code, or (2) made without considering the report of a Rule Committee, or (3) made without the sanction, in the case of the High Court of Calcutta, of the Government of India, or, in any other case, of the Local Government. The Rule Committees are to consist of three Judges of the High or Chief Court, of whom one at least must have served as a District or Divisional Judge for three years, of a barrister, and an advocate (not being a barrister) or *Vakil* or pleader practising in the Court, and, in Calcutta, Madras, and Bombay, an attorney. The scheduled Rules will have effect until annulled or altered by the High or Chief Court, and are thus exemplars, which, subject to certain safeguards, they can modify at their discretion. The constitution of the Rule Committees, which has obviously been framed with knowledge and sagacity, will bring the Bench and Bar into closer touch and will reflect, through at least one of the Judges, the experience of the Subordinate Courts, which may sometimes be forgotten or overlooked in high places. The general scheme will enable the rule-making authorities, by alterations or additions or omissions, which the best local knowledge will suggest or approve, to keep procedure continuously in accord with varying local needs, and that, too, without resort to the legislature and consequent years of delay. The authority to omit is perhaps

the most important of any. It is one thing to guide the Courts; quite another to make the litigating public in India depend upon the legal profession. Many of the provisions in the scheduled rules could not be easily worked without the aid of lawyers, and are too technical and elaborate for frontier tribes still in the predatory stage, and not even yet wholly restrained from pillage and private war, and for uneducated peasants who are accustomed to bring their own cases into Court without any assistance save that of the petition-writer seated in the Court compound. One main difficulty of devising civil procedure in India is that you have to suit, on the one hand, an ignorant peasantry, and, on the other, commercial communities, such as are found in the West, like those of Bombay and Calcutta. This difficulty the Bill goes far to meet by the flexibility which it derives from the distinction between fundamental principles and variable rules. Local opinion upon it has yet to be heard; but we may cordially wish the new venture the success which it appears at first sight to deserve.

"It must not, however, be supposed that the gigantic industry devoted to the Bills of 1901 and 1903 represents labour thrown away. The Institutes of Justinian, founded on Gaius, could hardly have been brought into harmony with the existing law without the previous compilation of the Digest, and the first edition of Justinian's Code. It is acknowledged that the care with which the Select Committee on the first Bill examined every detail of procedure has greatly facilitated the work of their successors. The new form given to the Code will further the cause of legal education. Departmental examinations abound in which the Code figures; and probably many people have felt the absurdity of compelling novices to get more or less by heart, as much as their brains will hold of an enormously lengthy Code, mainly concerned with matters which can best be learnt—perhaps only learnt at all to any useful and lasting effect—in actual practice. Now it will be necessary merely to point to the body of the Code which, like a set of titles in the Institutes, will at once inform the mind upon the essential principles underlying this branch of law. Already a good many native States have adopted or followed the Code of 1882. The present revision will tend to expedite the important and beneficial process of bringing the law of British foreign territory in India into closer accord. In another part of this Journal[1] it has been suggested that the Indian Codes will be found to possess great value now that we have been compelled to undertake the political tutelage of primitive populations outside India. For such a purpose the Bill of 1907 when enacted will be far more suitable than the Code of 1882.

"In what way Indian Codification may react on Codification in parts of the British Empire which are not so primitive as East Africa, is a problem too wide for discussion in this note. The case is complicated by some of the Crown Colonies having set out on a career of Codification of their

[1] Page 172 *supra*.

own, and, as Sir James Fitzjames Stephen found, Anglo-Indian law may be repelled by the coherent and highly elaborated doctrines of mature legal systems of immemorial growth, just as the waters of surrounding creeds are dashed back by the iron-bound strength of the dogmas of Islam. But all this is a matter in which the last word will not yet be said, and it may well be left for future speculation."

SIR A. F. S. MAASDORP'S *INSTITUTES OF CAPE LAW.*[1]

[*Contributed by* R. W. Lee, Esq., *Professor of Roman-Dutch Law in the University of London.*]

This handy octavo volume of some 400 pages forms the third instalment of Sir A. F. S. Maasdorp's valuable Institutional work on the Law of Cape Colony. That a man of Sir A. F. S. Maasdorp's position should give the result of his studies and experience to the world in such a form is matter of congratulation to all who are concerned in the study or practice of South African Law. The volume before us contains both the theory of Contract in general—a portion corresponding to ss. 241 to 432 of the German Code—and also the particular Contracts of Donation, Deposit, Loan for Use, Loan for Consumption, Purchase and Sale, Letting and Hiring, Building Contracts, Carriers, Agency or Mandate, Partnership, Exchange, and Suretyship. The corresponding portion of the German Code comprises ss. 433 to 822. The book concludes with two chapters on Quasi-Contract. The topic of obligations from Delict is reserved for a fourth and last volume. When the whole work is complete it will form a permanent addition to the legal literature of South Africa. Perhaps the learned author may find it possible in future editions, without unduly increasing the size of his book, to enlarge its scope by including more numerous references to the Statute and Case Law of the other Roman-Dutch Colonies in South Africa. The occasional errors which critics have detected in the earlier volumes do not, in the view of the writer of this notice, gravely detract from the value of the work. They will no doubt be removed in subsequent editions.

The fact that it has been found possible to expound most of the general theory of contract in eighty-nine pages of large print is a testimony to the simplicity of a legal system which admits of such treatment. Readers of this Journal will perhaps be more interested in a comparison of this system with English Law than in a minute criticism of Sir A. F. S. Maasdorp's work. To this comparison, therefore, this notice will be in part directed.

On the threshold of the subject of Obligations the reader is confronted

[1] The Institutes of Cape Law, being a compendium of the Common Law, Decided Cases, and Statute Law of the Colony of the Cape of Good Hope. Book III. The Law of Obligations. Part I. Contracts. By Sir A. F. S. Maasdorp, Kt., Chief Justice of the Orange River Colony. J. C. Juta and Co., Cape Town, 1907.

with a distinction, derived from the Roman Law, between civil obligations and natural obligations. The former ground an action. The latter are in some cases available as a defence. But obligations based upon the natural instincts of gratitude, family affection, pity, and the like, are devoid of all legal significance (Voet, 44, 7, 3). A legal obligation is defined (p. 2) as "one which the debtor or obligor can be compelled to fulfil or comply with by action at law."

The Roman Law had no general theory of contract any more than the English Law has any general theory of tort. To make an agreement actionable one must be able to refer it to one or other of the recognised kinds of contract or vested pacts. In Roman-Dutch Law no such limitation exists. All contracts are consensual (p. 9), so that an agreement to lend or to exchange is just as much actionable as an agreement to sell or to give. It is convenient, however, to retain the terminology of the Roman Law and to continue to speak of contracts as consensual, real, and innominate.

Our author defines a contract as "any voluntary serious and deliberate agreement to give, do, or make good (præstare) anything which is based upon any reasonable ground, cause, or motive" (p. 9). The essentials of every contract are (p. 13) (1) "that the parties to it be competent to contract, (2) that the subject-matter of the contract be legal, (3) that the contract be voluntarily, seriously, and deliberately entered into for some reasonable cause, and (4) that the formalities or solemnities required by the law be observed." It is odd that this enumeration should not include the most essential thing of all, namely, that there should be consensus (or at least the phenomena of consensus) between the parties. This omission is supplied in a later passage (p. 29).

The South African Courts, like the English Courts, express consent in terms of offer and acceptance. The law as to posted acceptances seems unsettled. The dictum of Kotze, C.J., cited on page 32, that "an offer made by letter, although accepted by the person to whom it is made, does not establish a contract until the acceptance has come to the knowledge of the offerer, or, at any rate, until an answer by means of a posted letter has been sent to the offerer," is not illuminating. The law as to contracts concluded by the acceptance of a railway ticket or the like (p. 264) corresponds closely, but not exactly, with the English Law expressed by the House of Lords in *Richardson* v. *Rowntree* ([1894] A.C. 217).

The perplexing questions raised rather than decided in our Courts by *Denton* v. *G.N. Ry. Co.* (1856) 5 E. & B. 860, and *Warlow* v. *Harrison* (1858) 1 E & E. 295, seem to have received little attention in South Africa.

Every one familiar with the recent developments of South African Law will turn with interest to Sir A. F. S. Maasdorp's treatment of the unhappy controversy as to *Causa* and "consideration." He will be rewarded by an impartial and scholarly examination of the authoritative text books and decided cases. That the English theory of consideration has any place

in the pure Roman-Dutch Law is both intrinsically improbable and has been repeatedly disproved. The question will now be taken as settled in the negative except by such as choose to err with that eminent judge and great lawyer, Sir Henry de Villiers. What should take its place in the Roman-Dutch, and more particularly in the South African, Law of Contract is unhappily, in spite of Sir A. F. S. Maasdorp's exposition, far from clear. Is it "reasonable cause"? Is it "serious and deliberate intent"? Is it both? Grotius (Introd. 3, 1, 52) is quoted to the effect that amongst the Germans "all promises made for any reasonable cause (redelyke oorzaak) gave a right of action and of exception"; and "reasonable cause is considered to be present when a promise is made with the object of a gift, or is accessory to some other transaction, whether it is made at the time of such transaction or afterwards." The words last quoted (in inverted commas) are taken from the author's translation of Grotius. In the work under review he substitutes "auxiliary" for "accessory." In a footnote (p. 39) he expresses the view that here Grotius evidently refers, like Voet (2, 14, 9), to the *pacta adjecta* of the Roman Law and in the same sense. There is nothing to justify such a limitation in the original text of Grotius, which runs as follows: "Redele oorza'tke werd verstaen soo wanneer de toezegging ofte belofte gheschied ter schenck, of dient tot eenige andere handelinge 't zy sulcs gheschied ten tijde van de handeling ofte daer nae." These words may be rendered: "Reasonable cause is understood [to exist] when the promise or declared intention relates to 'gift' or serves some other transaction, whether such promise or declared intention is made concurrently with the transaction or after it." The distinction indicated by the last words seems to be not, as suggested, between *pacta incontinenti adjecta* and *pacta ex intervallo*, but between promises made, to borrow a phrase from English Law, upon a present consideration and promises given upon request in return for a past service (cf. *S.* v. *Leeuwen*, R.D.L. Bk. iv. 1, 4). It has escaped the author's notice that to hold otherwise is to restrict the *reasonable cause* which he makes a necessary element of all actionable agreements to the two cases of (1) donation and (2) adjected pacts, and so to rob his principle of the universality which he claims for it.

Turning from the Dutch authorities to the Latin, we find not a word about reasonable cause, but in place of it the requirement of serious and deliberate intent. This, and not reasonable cause, is insisted upon both by Vinnius and by Voet. Sir A. F. S. Maasdorp "contaminates" his authorities, and includes both elements in one definition. But, on his own showing, the "cause" is only important as indicative of intention. "An agreement," he says (p. 34), "to be binding, must have been seriously and deliberately made, and it is not regarded under our common law as having been so made unless it was based upon some *reasonable ground or cause.*" And again (p. 36), "All that is meant by a reasonable cause (redelyke oorzaak) in our law is that an agreement, in order to afford a right of action, shall have been

entered into with a serious and deliberate mind and intent, from or upon some motive, ground, reason, or cause which induced the person entering into it 'to bind his own will for the benefit of another.'" Is it sufficient, then, in order to make a promise binding, that it should be "an act in the law"—to borrow a phrase from our own books;—*i.e.* an act directed to a legal result? The answer should be "Yes," if we follow the guidance of Vinnius and of Voet (cf. *S.* v. *Leeuwen*, R.D.L. Bk. iv. 1, 3). This would give a perfectly satisfactory and consistent theory. But, apparently, in South Africa the answer is "No." For we are told (p. 36) that, donation excepted, and apart from the consensual or real contracts of the Roman Law, in which "the reasonable cause would be the serious and deliberate intention of entering into such contract with all its consequences,"—that, the cause must consist in "the serious and deliberate intention of doing or giving something for or to another from any reasonable cause or motive falling short of mere liberality."

Mere liberality, then, will not do; nor a "pepper-corn consideration" (p. 36). But (p. 47) when a father made a gratuitous promise to his son, who was then on his death-bed, that he would procure the emancipation of the plaintiff, who was a female slave of his, and who had up to the time of the son's illness lived in concubinage with the latter, the Court found a reasonable cause in "the affection which the father bore to his dying son and the relationship, however illegitimate, which subsisted between the son and the plaintiff" (p. 48). With regard to "pepper-corn considerations" our author cites de Villiers, C.J., as saying in *Mtembu* v. *Webster*, "A purely nominal consideration would certainly not be regarded in our Courts as a *reasonable cause*," and adds by way of comment (p. 37), "so that, after all, the test as regards the cause of an agreement is not so much whether it amounts to 'consideration,' but whether it is reasonable." It seems, then, that an agreement must be not merely (1) serious, and (2) lawful, but (3) reasonable, and the Court is to pronounce on its reasonableness. If this is really the law of South Africa, it would seem that the judicial interpretation of "cause" is likely to be as troublesome to the South African judges as the interpretation of consideration has proved to our own. We have dwelt upon this point at some length, because the South African Courts, having within their grasp the easy, simple principle that all serious agreements made between competent persons for legal objects are legally enforceable, seem to be blindly resolved to stray, and to stray further, in a region of quagmire and morass. It may be noted finally that, with all his efforts, our author cannot get away from consideration. The phrase recurs in the course of his work, as where he says (p. 273) that valuable consideration is not necessary to the validity of a contract of agency. The phrase "just and valuable consideration" has even found its way into s. 83 of the Insolvent Ordinance (Ord. 6, 1843), cited on p. 96.

There are many other points of resemblance or difference between the

Roman-Dutch and the English Law upon which it would be interesting to comment. It must suffice to indicate some of them. The contract under seal is unknown. Generally no solemnity of form is required, but transfers of (not contracts relating to) immovables, antenuptial contracts, and donations exceeding £500 are invalid as against third parties unless registered in the office of the Registrar of Deeds. The Law of Capacity of Parties differs widely from our own. The heads of illegality are in the main the same. Fraud and error are discussed fully. The term error is wide enough to include the state of mind induced by innocent misrepresentation and undue influence. A person who has obtained property by such fraud as goes to the root of a transaction cannot give a good title to an innocent alienee; in other words, the rule in *Cundy* v. *Lindsay* (1878), 3 App. Ca. 459, applies in Roman-Dutch Law to all cases of fraud, not merely, as in our law, to fraudulent impersonation. The chapter on Interpretation of Contract reflects the principles of English Law. The distinction between penalties and liquidated damages is recognised, as in England, and, it seems, with similar results. The Roman-Dutch Law has inherited from the Civil Law the distinction between various degrees of diligence. This may prove, as is suggested by a footnote on p. 273, a *damnosa hereditas*. The English Law has escaped from these shackles.

It is remarkable that Sir A. F. S. Maasdorp does not devote a chapter to Breach of Contract. It can scarcely be reserved for the volume on Delict. Nor is there any separate treatment of Discharge. The question of the Measure of Damages is discussed in various places, but only in connection with special contracts.

PRIMITIVE LAWS AND USAGES.

In the last number of the Journal appeared a suggestion with respect to the systematic collection of information as to primitive laws, more especially those of communities within the British Empire. Attention was called to the need of prompt action. The primitive elements are fast disappearing or, more often, they are being mixed with imported and alien materials; and in a little time it will be impossible to collect unalloyed primitive usages. It was remarked, "Ten or twenty years hence it may be impossible as to many communities to distinguish the primitive elements from those which have filtered into them by reason of their contact with civilisation." It was added that the Journal would give what aid it could to efforts to prepare a *corpus* of primitive law for such parts of the British Empire as furnished materials. Dr. Meyer, the energetic Secretary of the Internationale Vereinigung ür vergleichende Rechtswissenschaft, writes as follows with respect to the suggestion:

Internationale Vereinigung für vergleichende Rechtswissenschaft, etc.

Zu Berlin, W. Meirotto Str. 5.

Dear Sir,

In the *Journal of the Society of Comparative Legislation* I find an Article by you as to Primitive Law.

It may interest you to learn that our Society as early as 1893-4 opened a discussion of the question of the primitive legal relations and those of half-civilised races, and the answer was given by the Society in an Article, "Legal Conditions among the Native Laws of Africa and Asia," by Julius Springer, Berlin (1903).

Also in the previous year the Society published a great number of ethnological questions, which were published by R. von Decker in Berlin, 1906, and these were translated by us into French and English. This collection would undoubtedly enable you to carry out your proposal of a *corpus* of primitive laws and customs in the British Empire, provided that the English Government and the various learned Societies in all parts of the British possessions would lend their assistance.

I should be most grateful if you would inform me whether you could, and in what way you could, assist the Society.

I have forwarded through our publishers to you a copy of these inquiries. You will see that the inquiry covers much ground; we saw that a bare inquiry into the legal conditions of primitive people was not enough. The history of their laws could not be separated from that of their social life—more especially from their religious customs, and the economic conditions of life.

With the highest esteem, etc.

From

Dr. F. Meyer.

The volume above referred to is entitled *Ethnographische Fragesammlung*, and is edited by Dr. Steinmetz, whose investigations of primitive criminal law are well known, and it will certainly be of great use to inquirers. If it has any fault, it is that of over-elaboration; it pre-supposes a very large amount of time at the disposal of the person questioned, and the person questioning. Aid will be derived from Dr. S. R. Steinmetz's *Rechtsverhältnisse von eingeborenen Völkern in Afrika und Ozeanien*. It contains the answers received to questions circulated by the Internationale Vereinigung für vergleichende Rechtswissenschaft in 1895. Reference may also be made to Mr. A. G. Keller's *Queries in Ethnography* (1903); Mr. T. G. Frazer's questions published in the *Journal of the Anthropological Institute*, and to Professor Köhler's paper in the *Zeitschrift für vergleichende Rechtswissenschaft*. Aid is also to be got from the works of Bastian and Post, and the *Studi di Ethnologia Giuridico* of Dr. Mazzarella.

All these works and others mentioned in the last number of the Journal, will be helpful to inquirers in this field.

To state the task is also to state its difficulty and indicate its magnitude. It is to describe a task which could be accomplished even imperfectly only by a multitude of inquirers. Obviously, the first step is to know what has been done. In some instances the work is well-nigh complete; excellent books on the subject exist; they need only to be brought up to date. In other cases a beginning has been made; travellers, missionaries, officials, and royal commissions, have collected materials well worthy of attention. There is a third class of cases as to which practically nothing has been done. Either the information obtained is fragmentary, or it is untrustworthy; it has been collected by persons eager to prove some favourite thesis; or it is the work of those with no aptitude for scientific inquiry. The results obtained by not a few inquirers are vitiated by the error to which Mr. Keller adverts in these words: "In judging of native institutions there is no more common or fatal error than that of projecting one's own civilised ideas into the minds of the uncivilised, and thus interpreting data with bias."

It is almost needless to say that special considerations apply to India. There the work has already been largely carried out; such collections as Sir C. L. Tupper's *Punjab Customary Law* leave little to be desired. For the present, attention might be confined to the Colonies.

To clear the ground it would be well to ascertain first as to each Colony the true state of the case, and to elicit answers to the following questions:

(1) What tribes or communities within the particular community or territory have a distinct set of laws and usages?

(2) What collections of such laws and usages exist?

(3) What is the date of such collections, and by whom were they prepared?

(4) Are they complete? Do they need revision or addition? Do they faithfully record existing usages?

(5) In the writings of travellers or missionaries or others, are there trustworthy accounts of such laws and usages?

(6) What means are recommended for collecting laws?

(7) What societies or organisations for obtaining such information exist?

Concise answers to these questions are invited. They will be published, and it is hoped that they will show the true magnitude and nature of the task, and the best means of accomplishing it. They will also aid in the work in which Dr. Meyer suggests co-operation.

A CHINESE COMMENTARY ON THE GERMAN CIVIL CODE.[1]

[*Contributed by* ERNEST J. SCHUSTER, LL.D.]

THE fact that the first English translation of the *German Civil Code* should have been produced by a citizen of the Celestial Empire proves that the East and West have, after all, come much nearer to each other than is generally supposed. The translator is obviously a man of exceptional ability and industry, and he must be congratulated on the completion of a task which, even for one who is not handicapped by the difficulty of translating from an acquired into an acquired language, would have been sufficiently arduous. As a general rule, the translation is not only correct, but as intelligible as a literal reproduction of the highly technical forms of expression of the *German Civil Code* can possibly be. It would have been miraculous if mistakes had been avoided entirely, but the non-accomplishment of such a miracle does not diminish our admiration for the translator's talents. It may however be useful to point out some deficiencies which, in our opinion, would have been avoidable, and which somewhat detract from the usefulness of the work.

The expressions by which German technical terms are rendered are to a large extent—perhaps to a larger extent than the courteous and complimentary acknowledgment in the preface implies—taken from the present writer's work on *German Civil Law*. Without claiming any special merit in respect of the choice of these expressions, he may be allowed to express his approval of this course, on the ground that it is obviously desirable that English authors who write on continental law should, as much as possible, establish a uniform terminology. I cannot, therefore, help regretting that Dr. Wang, having once made such an extensive surrender of originality, should not have entirely refrained from the difficult task of coining new expressions, more particularly as some of the terms invented by him are eminently calculated to mislead English readers. As the elucidation of each particular instance of this fact requires an undue sacrifice of space, one example must suffice. The terms *Vorbehaltsgut* and *Eingebrachtes Gut* are

[1] *The German Civil Code.* Translated and annotated, with an Historical Introduction and Appendices. By Chung Hui Wang. London: Stevens & Sons, Ltd. 1907. 8vo. xxv. and 631 pp.

respectively rendered by "separate property" and "contributed property." This necessarily creates the entirely mistaken impression that the *Eingebrachtes Gut* is not the separate property of the spouse to which it belongs, and that in the case of spouses living under any régime of community of goods, the "contributed property" forms part of the common fund. The provision of s. 1555, which refers to spouses living under the régime of community of movables, and which Dr. Wang translates: "the husband does not have separate property," will be taken by any uninformed reader to mean that under the régime in question the whole of the husband's property must necessarily belong to the common fund, which reading is, of course, entirely opposed to the true meaning of the section.

The fact that Dr. Wang, very naturally, does not always know whether a particular word has a technical meaning in German law is another source of error. If, for instance, he had known that the word *Niederlassung* has a well-defined technical meaning, he would not have said, as he does in his translation of s. 7, that "a person who *habitually resides* in a place establishes his domicile in that place," and would not thereby have created an entirely mistaken impression as to the meaning of "domicile" in German law.

The footnotes form the least satisfactory part of the book. If the use of a Code is not to be a pitfall, it is absolutely necessary to mention in their appropriate places the separate enactments by which the rules contained in the Code are supplemented or modified. This is done with respect to some of the provisions of the Codes, but in the majority of cases these supplemental references are either omitted entirely or given in an incomplete or inadequate manner. Thus, for instance, a reader is led to believe by s. 765 that no guarantee is valid unless evidenced by a document signed by the surety, whilst in reality (owing to the effect of Commercial Code s. 350, to which the translator fails to call attention) no writing is required for any *commercial* guarantees. The note to s. 12 states that the provision contained in that section for the protection of names applies to the names of "juristic persons" as well as to the names of natural persons, but it omits to call attention to the elaborate rules as to the firm-names of single traders and commercial partnerships and companies contained in Commercial Code ss. 17, 18. In the note to s. 22, which deals with associations established to carry out "economic enterprises," and which explains that the term "economic enterprises" includes "commercial enterprises," as well as others which are not of a commercial nature, the translator fails to point out that the section does not at all apply to associations established for commercial purposes, as these are entirely governed by the rules relating to them contained in the Commercial Code or in other Statutes. The notes to the sections dealing with "powers of agency" fail to notice the extremely wide power of agency which German law attributes to a "procuration holder" by virtue of s. 49 of the Commercial Code. The translator does not call attention to the fact that

the provision against compound interest contained in s. 248 is subject to a most important exception provided for by s. 355 of the Commercial Code.

These, and numerous other omissions of the same kind, cannot be excused on the ground of want of space, as many of the notes contained in the book might well have been dispensed with, being either superfluous or unintelligible or inaccurate. Statements, for instance, like that contained in the note to s. 793 (which mentions "theatre tickets, meal tickets, and bathing tickets" among "the most common examples" of obligations to bearer), or like that contained in the note to s. 872 (which tells the reader that "a proprietary possessor has no possessory action"), ought not to appear in the work of an author so learned and talented as Dr. Wang.

The idea of having a glossary of English technical terms (*i.e.* of English terms used as equivalents of German technical terms) is a happy one, but the explanation of the terms is not always satisfactory, and the glossary is very incomplete, as it omits the equivalents of many technical expressions of German law which quite specially call for explanation. Thus, the equivalents of *Verzug*, *Verschulden*, *Vorsatz*, *beschränkte Geschäftsfähigkeit*, *Bereicherung*, *Schuldübernahme*, and many other similar highly technical terms, are not contained in the glossary, whilst some of the English expressions used for them by the translator are particularly liable to be misunderstood (*e.g.* the expression "default," by which the word *Verzug* is generally translated, but which in s. 425 is also used as the equivalent of *Verschulden*, and the expression "fault," which in other places is intended to reproduce the last-mentioned term).

The publishers deserve recognition for the excellence of the printing and the magnificence of the outward appearance of the book. It is to be hoped that they will be rewarded by an extensive sale, and that in a new edition the book will be made as useful and trustworthy as it can easily be made by judicious correction.

REVIEW OF LEGISLATION, 1906.

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REVIEW OF LEGISLATION, 1906.

INTRODUCTION.

[*Contributed by* EDWARD MANSON. ESQ.],

NEARLY 2,000 Acts and Ordinances passed this year, in the British Empire alone, attest the energy of the Legislatures—the efforts of each community to re-adjust itself to changing conditions and give free play to the forces that are moulding the national life. Some of them are novel and remarkable. An interesting example is the Act of the Commonwealth of Australia for the preservation of Australian industries. It is directed against two abuses—(i) Monopolies and (ii) Dumping. Any person who enters into a contract with intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having regard to the interests of producers, workers, and customers, is guilty of an offence, punishable with a fine of £500. The significance of this provision is in the interpretation of the words "unfair competition." A commercial trust is to be deemed "unfair competition": so is any competition which would probably, or does in fact, result in an inadequate remuneration for labour in the Australian industry, or would probably, or does in fact, result in creating substantial disorganisation in Australian industry or throwing workers out of employment. "Dumping" is dealt with in the same drastic fashion.

Child Legislation.—The care of the young—*spes gentis*—is again a noticeable feature of the year's legislation. Queensland has been dealing with "neglected children," including under that description begging and destitute children, children whose relations are drunkards, or dead, or undiscoverable, or who associate with persons of bad character, and children under ten who sell matches, newspapers, etc., in public places. Victoria has been establishing Children's Courts, so has New Zealand, so has Tasmania. In Germany the first Children's Court was to be opened at Frankfort on January 1, 1908. Victoria makes it unlawful to supply any smoking materials to juveniles under sixteen, and Ontario prohibits billiard-room keepers admitting minors under eighteen. Trinidad and Tobago have made provision for the industrial and technical training of boys between fourteen and eighteen by binding them apprentice—a reversion to old

methods worthy of note in these days when a plethora of unskilled labour is helping to fill our workhouses and gaols.

Gaming.—One vice—very prevalent at the present day—gambling and betting—has come under the censorship of the Legislature of Victoria. The Act is a very elaborate one, in four divisions, dealing respectively with (i) lotteries, (ii) gaming, (iii) street betting, and (iv) race meetings. Advertising lotteries, in whatever form, is made an offence. "Place," that much-tormented word, is defined as "any place whatsoever, whether within a building or not, whether upon land or water, whether defined as to area or not, and whether private property or otherwise." Balloons or airships seem the only escape from this remorseless definition. The totalisator—a favourite betting medium in Australia—is put under strict quarantine. Any house where a totalisator is used is a common gaming house. Tipsters' advertisements in newspapers are prohibited. Any person engaged in street betting may be arrested by the police without a warrant. Racecourses have to be licensed, and at a heavy fee. It will be interesting to hear how far these *tenacia vincula* have been able to bind the elusive Proteus, and whether—

Doli circum hæc demum frangentur inanes.

The United Kingdom and New South Wales have also been legislating against the same growing vice.

Habitual Criminals.—Among the most suggestive Acts of the year is one by the Legislature of New Zealand dealing with the "habitual criminal."

A person who has been twice convicted of any offence of a class comprising certain sexual offences and abortion, or who has been four times convicted of any offence of a class comprising wounding, housebreaking, theft, false pretences, and other offences against property, may, if again convicted upon indictment of an offence coming within either of these classes, be declared by the Judge to be an "habitual criminal," and as such is to be liable to detention in a special reformatory prison during the Governor's pleasure. The offender may apply for his discharge on the ground that he is "sufficiently reformed," and if the Judge is of that opinion may, on the Judge's recommendation to the Governor, be discharged. But he must report himself periodically to a Probation Officer, and if he relapses into crime may be recommitted. Six convictions for minor offences will—on a seventh—constitute the offender an habitual criminal. The principle is that he is to be punished not merely for the particular offence, but to expiate by exclusion from law-abiding society a long course of criminality. This special treatment of habitual criminals is to be the subject of a Bill by the Home Secretary in the coming Session, and should go far to rid society of a perpetual pest and source of danger.

Husband and Wife.—Another topic—marriage and its incidents—is a good deal in evidence. France has made important and far-reaching changes.

The old law required the parents' consent until twenty-five. Now the age is twenty-one. If after twenty-one, and before thirty, consent is refused, the parties may request it by a "respectful and formal act," and if the consent is not then given within thirty days, the marriage may take place without it. The Act also secures married women in the enjoyment of their earnings. Monaco has introduced a new conception of marriage (see p. 217), Bermuda and Manitoba have been consolidating and amending their marriage law. Tasmania relieves against defects in celebration. New Zealand empowers the Court in certain cases to give the consent to marriage of a minor when the parents refuse. The Bahamas legalise marriage with a deceased wife's sister.

Michigan has been prohibiting marriage by epileptics, imbeciles, or insane persons. Nebraska declares marriage between first cousins of the whole blood void. Oregon makes wife-beating punishable with twenty lashes. Tasmania puts the spouses on the same footing in case of an intestacy. A new departure by Victoria in the matter of testamentary disposition is well worthy of note. It suffers not a man to disinherit his family. If he has by his will left his widow and young children without sufficient means of support, the Court may grant them maintenance out of the estate. New Zealand has a similar provision. Tasmania allows an infant husband of nineteen and an infant wife of eighteen to make a will.

Agriculture.—Agriculture is another subject with which the Legislatures have been busy. Trinidad and Tobago are promoting the study of scientific agriculture in all its branches. Dairy-farming is the subject of legislative attention in the Province of Saskatchewan; stockbreeding and dairy-farming in Quebec; cotton-growing in the Leeward Islands; livestock and ploughing matches in Ontario; horse-breeding in Manitoba; forest preservation in Grenada. Bermuda has been providing for the inspection of its agricultural produce before shipment abroad; Fiji for the inspection of its fruit for export; Ontario of its dairy produce; the United Kingdom for the analysis of food fertilisers. Manitoba legislates for the extermination of a long list of noxious weeds; Egypt against the cotton worm and its eggs; St. Vincent, St. Lucia, Grenada, and Montserrat to prevent the importation of plant diseases. New Zealand is looking after the diseases of bees. Victoria has been reclaiming its swamp lands. In this connection may be noted the Commonwealth of Australia's scheme for the scientific study of meteorology and the distribution of meteorological information.

These are a few sheaves from a vast harvest field! samples only of some of the principal subjects which are engaging the Legislatures of the world. Much more remains to arrest attention and suggest reflection, but it is only possible to glance at one or two.

Miscellaneous Legislation.—Norway has been protecting her antiquities. Quebec has abolished civil death, and replaces it with civil degradation. The Dominion of Canada has been legislating to exclude the undesirable immigrant

and to protect those it receives—and welcomes. South Australia has been establishing boards to fix prices and wages in industrial undertakings. Western Australia has been codifying its law of evidence. British Guiana has been looking after the purity of its butter, milk, tea, flour, and bread. New Zealand has been taking steps for the preservation of its scenery, a valuable asset in these tourist days. Sierra Leone has been giving statutory recognition to the West African custom of communal labour. Northern Nigeria has been establishing Native Courts, preserving the ancient judiciary system. Fiji has been dealing with dangerous dogs; Southern Rhodesia, East and Central Africa, Manitoba, Quebec, and Cyprus have all been taking measures to protect and preserve their big and other game. Newfoundland abolishes the barmaid. The Sunday legislation by the Dominion of Canada and by Italy is particularly striking.

One improvement by Tasmania in the "mechanics of law making" deserves notice. When an Act is amended it is to be reprinted as amended. Why should we not do that here? Our laws might then not answer so well as they now do to King James' felicitous description of them as "a crowd of Statutes crossing and cuffing one another."

FOREIGN.

1. EGYPT.

[*Contributed by* W. E. Brunyate, Esq., C.M.G., *Khedivial Counsellor.*]

Laws of general public interest—27.

Agriculture.—Law No. 3 imposes upon the occupiers of land and their agents the obligation to report to the village head-men the appearance of the cotton-worm or of its eggs. Law No. 14 gives power to the Minister of the Interior to impose the like obligation in respect of any other insect or disease injurious to the cotton plant.

Bankruptcy.—Law No. 26, approved by the Powers, provides that a debtor who suspends payment shall, in depositing his statement of affairs, state the cause of his insolvency. In the event of the debtor making proposals for a composition with his creditors, it is provided that the report on his proposals heretofore presented to the creditors' meeting by the judge shall be prepared by one or three representatives chosen by the creditors at a creditors' meeting; it further makes the finding of securities a condition precedent of the approval of the composition.

Census.—Law No. 17 directs the taking of the census in April 1907, and entrusts the Minister of Finance with the duty of carrying it out.

Civil Procedure.—Law No. 24, approved by the Powers, empowers either Chamber of the Mixed Court of Appeal to refer to the full Court any point of law arising before it as to which the Court has already given conflicting decisions, or as to which it dissents from a settled current of decisions. Any members of the Court who are unable to be present are to be replaced by first-instance judges. The Parquet is to be heard.

The Law is of interest as marking a departure from the well-settled principle of French jurisprudence, that no decision of a Court is binding in any subsequent case.

Criminal Law.—Law No. 13 assimilates the law as to offences against public decency applicable to foreigners to that applicable to natives.

Law No. 16 corrects a divergence between the Arabic and French texts of the Law as to Vagabonds of 1891.

Law No. 25, approved by the Powers, provides that any period spent

under preventive arrest shall be deducted from sentences of imprisonment passed by the Mixed Courts.

Criminal Procedure.—Law No. 5 reduces the Court fees in prosecutions before the Markaz Courts. The Law was intended to permit of instructions being given to prosecuting officers to leave aggrieved parties to bring their own action in trivial cases, if they so desired; the old scale of fees was, in certain respects, so high that such instructions, unaccompanied by a reduction in the fees, would have approximated to a denial of justice.

Law No. 9 confers upon prosecuting officers before Markaz Tribunals the right to enter appeals, a right which the Court of Cassation had rather unexpectedly held to be vested exclusively in the Parquet.

Law No. 10 confers the powers of officers of judicial police upon the head store-keepers at the principal railway stations, thereby enabling them to draw up *procès-verbaux* against such of their customers as are attempting to defraud the Railway Administration.

Law No. 15 adds the highest class of police N.C.O.'s to the list of officers of judicial police in the Code of Criminal Procedure.

Law No. 23, approved by the Powers, which modifies the Decree as to Judicial Organisation of the Mixed Tribunals, is a sequel to the legislation of 1900, by which criminal competence in bankruptcy cases was conferred upon those tribunals. The Powers insisted in 1900 that, in proceedings against foreigners, the Parquet should be exclusively represented by non-Egyptian magistrates. It is now accepted as sufficient that the proceedings should be authorised by a non-Egyptian magistrate. In view of the fact that the jurisdiction extends to native bankrupts with foreign creditors, it is provided that when a native is tried, whether alone or jointly with foreigners, half the assessors of the correctional Tribunal shall be native. A like provision as to the composition of the jury in criminal cases appears to have been added for the sake of symmetry.

Education.—Law No. 21 enlarges the Superior Council of Education. The members are mentioned by name and no provision is made for replacing them in case of resignation.

Law No. 22 creates, under the Ministry of Education, a Department of Agriculture and Technical Education. The duties of the new Department are not defined.

Expropriation.—Law No. 27, approved by the Powers, provides a procedure for the expropriation for purposes of public utility of lands or of interests in land the property of foreigners. There are no differences between the Law and that of 1896 governing the like matter in the case of natives of sufficient importance to require notice.

Finance.—Law No. 18 is the annual Budget. Laws Nos. 19 and 20 reduce the postal dues on the insurance of parcels and on postcards respectively.

Local Government.—Laws Nos. 2 and 12 create Mixed Municipalities on the ordinary lines at Damanhour and Beni-Suef respectively.

Protection of Animals.—Law No. 8, dated June 25, provides a more effective procedure for preventing the working of animals in an unfit condition: Law No. 11, dated July 4, repeals the same. The local Society for the Prevention of Cruelty to Animals, on whose initiative the first Law had been passed, realised in the interval that, while the old procedure was applicable to natives and foreigners alike, the new could be applied to natives only. Hence the repeal.

Public Health.—Law No. 1 gives power to the Minister of the Interior, in case of danger of an epidemic, to regulate or forbid the transport of rags and to make rules for their disinfection or destruction.

Public Service.—Law No. 6 re-adjusts the salaries and allowances of the junior grades of military officers.

Law No. 7 settles doubts which had been raised as to whether an official appointed by decision of the Council of Ministers to act for an official appointed by decree can exercise the statutory powers of such last-mentioned official.

Wireless Telegraphy.—Law No. 4 constitutes wireless telegraphy a Government monopoly.

2. FRANCE.

[*Contributed by* GEORGE BARCLAY, ESQ., *Licencié en Droit, Paris, and student of Lincoln's Inn.*]

The year 1906 was quite barren of any laws of more than mere local interest. In the first half of 1907, however, the French legislators have made up for this barrenness by the great importance and interest of the matters they have treated.

Marriage.—Several points in the French law of marriage were old fashioned and no longer suited the requirements of modern life. The idea of the *patria potestas* exercising its force in questions of consent of parents to the marriage of their children, without limit of age (subject to the "respectful summons" after the age of twenty-five), was in contradiction to the modern notions of independence.

In an age when the emancipation of woman is making huge strides, it is indispensable that a woman should have absolute and unrestricted control (save in exceptional cases) over what property she has acquired through her own work and from her savings in respect of that work. Until this year, a married woman could not, except where she held separate estate, manage her own property, and had never the full disposal of her realty, even if she had bought it with the earnings of her own work. Both these points have been materially altered by the laws after referred to.

The third law of importance is one concerning the re-marriage of a divorced woman.

The first of these laws was passed on July 21, 1907.

Art. 1 makes an alteration in Art. 63 of the Civil Code by suppressing the second of the two public notifications of marriage, which it required, and the provision that the notification must be made on a Sunday.

Art. 2 states that such notification shall publicly be exposed for a period of ten days, which must include two Sundays.

Art. 3 modifies the wording of Art. 65 of the Code without changing its meaning. If the parties have allowed a year to elapse since the notification, a fresh one is necessary before the marriage can take place.

Art. 4 reduces from six months (Art. 74 of the Code) to one month, the period for which one of the parties must have resided in the communal district in which they are to be married.

Art. 5 makes a few alterations in Art. 76 of the Code. It enumerates the facts to be stated in the marriage certificate, as follows:

(1) Names, ages, professions, places of birth and domicile of the parties.

(2) Whether they are of age or under.

(This apparent repetition applies to foreigners who may be of age according to their own national law, though under age in France, and *vice versâ*);

(3) Names, professions and domiciles of parents;

(4) Whether consent has been given by the parents or grand-parents and by the *family council* where such is required;[1]

(5) *Whether the notification mentioned in Art.* 151 *has been made* (vide Art. 7 below);

(6) *Whether any opposition to the marriage has been notified, and, if so, whether it has been withdrawn;*

(7) Declaration by the parties that they are willing to be married, and the statement by the "civil officer" that the union has taken place;

(8) Names, ages, professions, and domiciles of the witnesses, and their declaration whether they are related to the parties, and, if so, what is the degree and nature of relationship;

(9) The declaration, which was made in reply to the question put in accordance with provisions of the previous Art. 4 of the Code (Art. 75),[2] that there has or has not been a marriage contract; if there has, its date, the place of residence of the

[1] The consent of the "Conseil de Famille" is required by orphans who would need the consent of their parents if they were alive. The "Conseil de Famille" is composed of a minimum of six persons of the orphan's family, three being taken from the father's and three from the mother's side, and presided over by the Justice of the Peace of the locality.

[2] Art. 75, second paragraph, states that the civil officer shall "question the parties as well as the persons who authorise the marriage, if they are present, as to whether a marriage contract has been made, and, in the case of an affirmative answer, the date of such contract, and the name and place of residence of the notary who has received it." The reply is mentioned in the marriage certificate and serves to protect third parties in case the wife has separate estate.

notary who received it ;[1] all this under the penalty, for the civil officer, of the fine mentioned in Art. 50.[2]

The celebration of the marriage shall be entered in the Registry of Births, of the parties.

Art. 6 makes an important change in Art. 148 of the Code. It states that: "The son and daughter who have not attained the *age of twenty-one years* cannot be married without the consent of their father and mother. In case of disagreement, the consent of the father suffices."

(The old Article fixed the matrimonial period of majority at twenty-five years for the man and twenty-one years for the woman.)

Art. 7 is also very important. It provides that between the ages of twenty-one and thirty the parties must still obtain the consent of their parents, but, if this is refused, he, or she, can request it by means of a "respectful and formal act" (as specified in Art. 154, vide Art. 9 below). If the consent is not given within thirty days, the marriage may take place without it.

Before this law, the "respectful and formal act" had to be exercised in the same way, but it was necessary up to any age so long as the party requiring it had ascendants in a direct line.

Art. 8 adds a new paragraph to Art. 152 of the Code, which provides that, if the parents are divorced or separated, the consent of that one only suffices, in whose favour the divorce or the separation has been granted and who has charge of the child.

The new paragraph provides for the possibility of both these conditions not being fulfilled. In that case, the parent who gives his or her consent can apply to the Court for the consent of the other parent.

Art. 9 specifies the form of the "respectful and formal act." It shall be made by one notary only, instead of by two notaries or one notary and two witnesses, as was prescribed by the old Art. 154 of the Code. The new Article also specifies some details as to stamps and registration, and mentions a clause which is to be inserted in the "Act," to the effect that it is made for the purpose of obtaining their consent, failing which within thirty days, the marriage will be celebrated.

Art. 10 makes a slight alteration in Art. 155 of the Code. In case of "absence" of the parents, to whom the "act" mentioned in the previous Article of the Code should have been made, the parties can dispense with the consent on producing a proof that nothing is known of the whereabouts of these parents, and that they are absent in the sense of that word according to Art. 115 of the Code.[3]

Art. 11 modifies the wording of Art. 156 of the Code. It relates to the

[1] According to Art. 1394 of the Civil Code: "All matrimonial contracts shall be made before the marriage by a notarial deed."

[2] Art. 50 states that the dispositions in the previous Articles, if not carried out by the functionaries who are therein mentioned, expose the latter to a fine, which cannot exceed 100 frs.

[3] "Absence" is defined in Art. 115 of the Code as follows: When a person has

penalty applicable to a civil officer who has celebrated the marriage of persons under age and without the consent of their parents. The new law abolishes the penalty of imprisonment which was to be inflicted with a minimum of six months. Now the only penalty is that inflicted by Art. 192, namely, a fine which may not exceed 300 francs.

Art. 12 modifies Art. 157 by abolishing the penalty of one month, minimum, and maintains the fine as in the preceding Article.

Art. 13 modifies the wording of Art. 158 of the Code, which makes Arts. 148, 149, 151, 152, 153, 154, and 155 applicable to illegitimate children, legally recognised.

Art. 14 permits the consent of the "conseil de famille" to suffice, in the case of legitimate children, whereas, in the old Art. 159, a guardian *ad hoc* had to be specially appointed.

Art. 15 adds to Art. 165, which was incomplete. The old Article merely stated that the marriage shall take place in the "commune" where one or the other of the parties is domiciled. The new law allows it to take place where one or other of the parties is domiciled,[1] *or is residing at the time of the notification mentioned in Art.* 63 (vide Art. 1 above), *and in case an exemption has been granted, at the time when the exemption mentioned in Art.* 169 *of the Code* (vide Art. 22 below) *has been granted.*

Art. 16 states that the verification mentioned in Art. 63 (Art. 1 of this Act) shall be made at the place of domicile *or residence* of each of the parties.

Art. 17 adds to Art. 167 of the Code. If the present domicile of the parties is of less than six months' standing, the notification shall also be made at the previous place of domicile, *and if that has been of shorter duration than six months, it shall also be made at the place of birth.*

Art. 18 merely changes two words in Art. 168 of the Code, to make it agree with the alteration in Art. 63. The notification (instead of "notifications") shall also be made at the place of domicile of the persons under whose control one or other of the parties may be.

Art. 19. The same modification is made in Art. 170 of the Code. It refers to marriages between French citizens and a foreigner in a foreign country. It may be celebrated in accordance with the formalities of the *lex sitûs*, but the notification must be made in accordance with Art. 63.

ceased to appear at the place of his domicile or residence, and no news has been received of that person for four years, the interested parties may apply to the Court of First Instance to obtain a declaration of absence.

[1] Art. 102 of the Civil Code defines Domicile as follows: "The domicile of every French citizen, as regards his civil rights, is at the place where he has his principal establishment." This is very vague, and jurists have given various explanations as to the meaning of the word. The definition which is almost universally accepted is that given by Pothier: "Domicile is the place where a person has established the principal seat of his residence and of his business." This definition is itself borrowed from a Constitution of Diocletian (Code, De incolis, Book X.), "Ubi quis larem rerumque ac fortunarum suarum summam constituit."

Art. 20 modifies Art. 173 to agree with the reduction of the matrimonial period of majority. Parents may enter a caveat against the marriage of their children, though they may be over *twenty-one years of age.*

Art. 21 also changes the wording of Art. 192, relating to the penalty for not making the notification, and for not waiting for the delay required by Art. 63.

Art. 22 cancels Art. 169. This Article allowed an exemption, in exceptional cases, from the second notification. The new Article permits, in exceptional cases, exemption from any publication or any period of delay.

Art. 23 makes this Act applicable to Algeria and the colonies of Guadeloupe, Martinique, and the Reunion.

The Earnings of Married Women.—The next Act of importance is that relating to the earnings of married women. This Act is not incorporated with the Code as that of June 21 is. It is all new matter and quite contrary to the spirit of the Civil Code on the subject of the capacity of married women.

Art. 1. "Under any system of contract of marriage, and in spite of any clause in the contract to the contrary, a woman has, over the earnings from her personal work and the savings therefrom, the same control as that allowed by Art. 1449 of the Civil Code[1] to the woman with a separate estate." With this money she can acquire personalty or realty, and she has absolute control over and free disposition of the former without any interference on the part of her husband. All she has to do is to testify that she carries on a trade or profession apart from her husband. "The above-mentioned dispositions do not apply to earnings from work done jointly by the husband and wife."

Art. 2 gives a means of restricting the wife's freedom, in the event of abuse by her of her rights. If she squanders her money or administers her property badly or imprudently, the husband may apply to the Court to have her freedom restricted. The Judge may allow the husband to enter an opposition against any transactions between his wife and third parties.

Art. 3. The wife's creditors may seize property which, according to this Act, comes under her sole control. This property may also be seized by creditors of the husband, provided they can prove that the debt was contracted in the interest of the household. On the other hand, the husband is not responsible for his wife's debts, except when these have been contracted in the interest of the household.

Art. 4. In case of dispute, the wife may prove that such property arises from her earnings, by any legal means, even by witnesses,[2] but not by common report.

[1] Art. 1449 confers on a woman, separated "de corpore," or only "de bonis," the administration of her property.

[2] This is an exception to the general rule that proof by witnesses is not allowed in matters involving sums above 150 frs. as stated in Art. 1341 (Civil Code).

Art. 5 settles the mode in which the wife's property acquired from her earnings shall be regarded, on the dissolution of the marriage. It remains her sole and unattachable property, except for such debts as those mentioned in Art. 3 above.

Art. 6. "The wife has the right to sue in her own name, without authorisation of her husband, in all matters concerning the rights conferred upon her by this Act."

Art. 7 allows one of the parties to obtain from the Justice of the Peace an authorisation to attach the salaries or earnings of the other, should he or she not contribute, within his or her means, to the requirements of the household.

Art. 8. In the case mentioned in the previous Article the usual summons is not necessary, but a mere registered letter, sent through the post by the Registrar explaining the nature of the claim, will suffice. The husband and wife must appear in person unless they justify their absence.

Art. 9. All the procedure that is necessary to attach sums in accordance with the two preceding Articles, is notification of the judgment to the parties in whose hands such sums are attached.

Act. 10. Judgments delivered in accordance with Arts. 2 and 7 of this Act are provisionally executory, subject to the right of appeal. Even when the judgments have become final they may be varied, if justified by the facts.

Art. 11. This Act is also applicable to women married "before it was passed."

Divorce.—The third Act of importance is that relating to divorce. According to the Act of July 27, 1884, incorporated in the Civil Code under Art. 296, a woman could not contract a second marriage until ten months had elapsed since the divorce had become final. This precaution, taken for obvious reasons, seemed exaggerated. It has been deemed sufficient to take as a starting point for this delay the moment when cohabitation between husband and wife shall have presumably ceased.

Art. 1 of the new Act has therefore abolished Art. 296 of the Code, and enacted that the woman may re-marry as soon as the judgment or decree granting the divorce has been entered, provided that three hundred days shall have elapsed since the first judgment was pronounced.

Art. 2 allows a woman, separated from her husband when such separation has been converted into a divorce, according to Art. 310 of the Code,[1] to marry as soon as the judgment of divorce has been entered, and thus rendered irrevocable.

These three Acts make an epoch in the laws relating to women, as they develop much broader views than those taken by the Code. It is not unlikely that these are but the first steps to some extensive reforms on the subject.

[1] Art. 310, first paragraph: "When the separation has lasted three years, the judgment of separation may be converted into one of divorce, at the request either of husband or wife."

3. GERMANY.

[*Contributed by* E. J. SCHUSTER, ESQ., LL.D.]

There was no legislation of general interest this year.

4. ITALY (1907).

[*Contributed by* T. C. GIANNINI, ESQ., *of Rome.*]

The legislative activity during 1907 has been sufficiently remarkable, more especially in regard to the fact that it was directed in particular to the solution of problems and questions about which for a long time discussion had been rife.

Nothing has been neglected: public health, agriculture, the army, the navy, public works, the administration of justice, means of communication, etc.: Parliament has recognised the need for prompt reform in each of these matters.

We will make a brief summary of the chief Laws and Regulations, with the exception of those relating to railways which, owing to their importance, we discuss in a separate article.

Public Works.—The Law concerning the Water Board ("Magistratura delle acque"), (May 5, No. 257), whilst it provides for the needs of certain districts, abolishes an institution of former times, and also offers a remarkable example of the decentralisation of administrative functions. The Water Board has control over the provinces of Venice and Mantova, but the Po is outside its jurisdiction.

The Water Board, according to the Law, must provide, in the districts under it, for the proper management of all waters, whether in connection with forests or with any hydraulic works, and for the carrying out of repairs at the ports, along the seashore, and at the lighthouses.

Besides the entire care and management of all the water courses and of the lakes at Venice, some other duties within the aforesaid districts are entrusted to it which were assigned to the Department of Public Works by the Law of July 25, 1904 (No. 523), concerning hydraulic works.

Administration of Justice.—The administration of justice, if not entirely reformed, has been so strengthened as to make its action both quicker and more certain. The Law of March 7 (No. 62) has established another section of the Council of State (the 5th section) to which has been given jurisdiction in all cases for which the 4th section is the Court of Appeal, with the exception of cases involving questions of legitimacy and the reward of thrift.

For the 4th section of the Council, which is the Supreme Administrative Court, are reserved henceforth only appeals on questions of pure legitimacy.

Disputes as to competency are referred from the two sections to a commission of nine, consisting of a President and four Councillors from each of the judiciary sections.

Public Health Laws.—The Royal Decree of February 28 (No. 61) is important. It contains the single Code ("Regolamento unico"), for the carrying out of the laws to diminish the causes of malaria, and for the sale of quinine by the State. The malarious districts, as is pointed out, are still very extensive in Italy, in spite of active preventive work. This Code provides for the execution of the Laws of December 23, 1900 (No. 505), November 2, 1901 (No. 460), June 22, 1902 (No. 224), and May 19, 1904 (No. 209).

A district may be declared malarious on a request made by the local medical officer to the provincial Health Committee ("Consiglio provinciale di sanità"). The latter forwards its opinion and the reasons for it to the Central Health Committee at Rome, by which the matter is decided. As a rule, the infected district lies within a single commune, but the Government may include in it, for geographical reasons, land belonging to two or more communes.

Quinine is sold by the State, which acts as agent for this purpose, but has no monopoly.

When charitable societies and benevolent institutions are unable to supply quinine gratuitously in the quantities legally insisted upon, the management of the supply is taken over by the commune.

The medical officer and the communal doctors must see that all the country people and work people can obtain preventive and curative treatment of malarial infection.

The opening of quarries for building materials is subject to the consent of the local authority ("prefettura").

The fines for breaking any of the above Laws go to increase the income set aside for the supply of Government quinine, in addition to the sum granted for decreasing the causes of malaria. Landlords and manufacturers who have adopted preventive measures may be rewarded, and subsidies may be paid to the more severely afflicted communes, to benevolent institutions, and to all others who have contributed towards voluntary provision made for the distribution of quinine.

The quinine is prepared in a Government institution, and is supplied at a specially favourable price. The retailers are allowed a commission on their sales; like the central store and the auxiliary stores, they are subject, as regards the selling, to all regulations regarding sales of a privileged nature.

The Royal Decree of August 1 (No. 636) confirms the consolidated text of the Public Health Laws.

Social Laws.—Among the Laws of a social character we may refer especially to that of July 7 (No. 533), which revises a former Law of January 26,

1902 (No. 9), on Insurance Companies ("Associazioni tontinarie"). The Minister of Agriculture can empower companies which either undertake life insurance or annuities, to use the sums subscribed by the shareholders, in addition to the investments prescribed by the aforesaid Law of January 26, in loans to facilitate the construction of workmen's dwellings, or for the purchase of land in urban districts, or for the purchase, either by conveyance or surrogation, of claims guaranteed by a first mortgage; on movable property in towns; and in loans to all co-operative societies for production and consumption.

The amount of the loans made and of the claims purchased is limited. The rate of interest on the loans may not exceed 1 per cent. of the average net income obtained from the employment of the funds of the Insurance Company during the preceding year.

The Royal Decree of April 25 (No. 209) gives regulations for the rehabilitation of criminals, and states the cases for which, and the limits within which, this can be obtained. The said Decree provides that those criminals to whom rehabilitation is granted must not be included in the certificate of the judicial prisons, and shall enjoy, during the proceedings for rehabilitation, the advantages of the provision which exists for supplying a free defence.

Army and Navy.—The provisions made with regard to the marriage of officers of the Royal Navy (Law of June 16, No. 346) deserve to be noticed, and also the succeeding Law of June 23 (No. 365), which revised the Law of December 24, 1896 (No. 354), relating to the marriage of officers in the Army. In both Laws it is decreed that no officer whose annual salary is less than £160 can obtain the royal consent to his marriage unless he can show that he has also a yearly net income equal to four-fifths of the difference between £160 and the actual salary he receives. This income must be secured by a deed of settlement in favour of the future wife and her children.

Patriotic Laws.—Patriotic feeling also found an echo in Parliament, which, in the Law of June 28 (No. 366), declared the 4th of July in this year, being the centenary of the birth of General Guiseppe Garibaldi, to be a national holiday, and in the Law of July 14 (No. 357) granted life annuities to the survivors of the war of national independence.

Means of Communication.—The condition of the internal and international means of communication demanded reform, in consequence of the increase in business and commerce, and the Law of March 24 (No. 111) provides for an increase in the services of the post, the telegraph, and the telephone, and grants a sum of one million pounds, half of which is to be devoted to the extension of the telegraph system, to the improvement of the lines, and to the purchase and setting up of rapid apparatus, and a third of which is to be used to extend the telephone system. It establishes a central institution for the postal telegraph, which contains a central school for the professional instruction of officials for the posts of directors, and

an experimental laboratory for the approval, suggestion, and study of technical improvements in the service.

The Law of July 15 (No. 566) provides for the purchase of the principal telephone lines and systems which are under private management, and for the organisation of the Government telephone system, which is to be managed through the Department of the Posts and Telegraph, and is to be entrusted to a separate Director-in-Chief, with a technical administrative council. All the telephone lines and systems managed by the State, and others which are under its supervision, are divided into nine departments. The expense of one million pounds incurred by such a purchase is divided into twelve portions. The income and the expenses of the general management of the telephones are included in the balance sheet of the Department of Posts and Telegraphs, but in a separate section.

The sums paid according to the maritime conventions with Navigation Companies subsidised by the Government have decreased by £400,000 during the year. The inquiry into the renewal of these agreements is not yet completed, and, meanwhile, the existing conventions have been prolonged to the end of 1910 by a Law of May 30 (No. 272).

Labour Laws.—The Law of June 16 (No. 337) concerning the cultivation of rice must be noticed. This matter, which raised complicated problems of a hygienic, economic, and social character, was one of those which in the course of 1907 roused eager debates and numerous agitations affecting the public peace. Consequently the question has assumed an importance which it never previously obtained. A notable feature of the Law just referred to is a new institution, that of the Board of Conciliation ("Commissioni di Conciliazioni") a kind of elected court of magistrates, whose decisions in some cases, that is, when the members agree unanimously, have the legal and compulsory force of judgments given in arbitration according to the rules of civil procedure.

This Law determines the general conditions and the hygienic provisions for the cultivation of rice, and the regulations regarding contracts for work in the rice fields, especially as to the number of hours worked, the interval of rest for the labourers, and their qualifications.

The Royal Decree of May 30 (No. 376) is also of considerable importance. It confirms the consolidated text of the Laws concerning the National Bank for the insurance of workmen against disablement and old age, which is established as an autonomous body, with a central office at Rome and branch or divisional offices in other towns.

As an autonomous institution the Bank has its own representation and administration, entirely distinct from that of the State, which subscribes to it and supervises it.

The original endowment of the Bank consists of an inherited capital of £400,000, half of which was obtained from an allowance on the total amount of bank-notes, which was strictly limited as a result of the Law

abolishing the inconvertible currency, and the other half from the net profits, available on December 31, 1906, of the post-office savings bank.

The same Law regulates the lending of the capital, the subscriptions, the payment of the annuities, and the insurance transactions which the Bank is authorised to carry on.

The Law of July 7, 1907 (No. 487), concerning the weekly day of rest is the result of prolonged study and of scientific investigation of a character at once physiological, economic, and moral. The Labour Laws afford an opportunity of issuing, in addition, certain regulations as to the period of rest. This Law obliges all undertakers and directors of industrial and commercial concerns, of whatever kind, to allow their employés an interval of at least twenty-four consecutive hours in every week. But certain industries are excepted from this rule for reasons of convenience, as in the case of persons who enjoy the weekly rest in some other manner, or persons engaged in the public service (State railways, private railways, and tramways; and in general services of all kinds which are managed by the State), who have either already been granted a weekly day of rest, or whose work is of such a nature as not to allow of interruption.

The day of rest must, as a general rule, be Sunday, exception being made for such work as is essential to the continuity of a business, and everything of such a nature that it cannot be deferred till after the holiday, for example, the cleaning and keeping up of machinery, of the means of transport of water and of energy, and work which is needed to repair damage due to natural calamities, or is undertaken by the public authorities.

For all such purposes Sunday work is permitted for a larger or smaller number of the employés and with indefinite frequency.

Considerations of public interest have made it advisable also to allow Sunday work in all those industries which supply general needs that cannot be deferred, as well as in industries which are carried on in the open air and are liable to be interrupted by bad weather. Sunday work, limited however to five hours, and not to continue after mid-day, is allowed too in shops selling food, combustibles, etc., and in other branches of commerce in small towns where the rural population depends entirely on Sunday for making its purchases.

Another important principle embodied in the Law is that any one who may be obliged to work on Sunday has a right to an equivalent period of rest during the week, so that his right to a total interval of twenty-four hours remains unaffected.

Important additions have also been made to the Labour Laws by another Law of July 7 (No. 416). This revises the earlier Law of June 19, 1902 (No. 242), concerning the employment of women and children.

The Law of July 7 (No. 526) contained provisions in favour of the small agricultural co-operative societies and of the small societies for mutual

insurance, with the object of encouraging these humble organisations, which have proved so useful in promoting agricultural prosperity, and which hitherto have been treated like all large industrial societies, and subjected to the commercial Code, and have therefore been at a disadvantage. Such societies have now been granted special regulations: a free publicity, purely local, instead of the official publicity from which the deeds of the societies and associations are exempt; they are also exempt from the tax of a register and of a stamp for ten years after the formation of the society.

Special provisions for those injured by accidents in the sulphur works in Sicily are made by the Law of July 14 (No. 527), which is intended to adapt the general provisions of the Law concerning accidents to the special conditions of work and wages which are found in the Sicilian sulphur industry; suitable tables are given of average wages, with special rules.

Agrarian Credit.—Agrarian credit has also been one of the objects of legislative activity. The Royal Decree of January 27, 1907 (No. 29), confirmed the Special Regulation concerning the establishment and duties of the institution, "Vittorio Emanuele III.," for the organisation of agrarian credit in the Calabrian Provinces.

This institution, formed with the object of organising agrarian credit and of supplying loans on mortgage on favourable terms to private persons, and for the reconstruction and repair of the buildings injured or destroyed in the earthquake of 1905, is fitly established in the three principal towns in Calabria (Catanzaro, Cosenza and Reggio Calabria). These establishments are empowered to make loans of money to agriculturists, to make loans on interest, to make advances to agrarian societies, to invest temporarily their available capital in shares issued by or guaranteed by the State, in title deeds for land ("Cartelle fondiarie") and in interest-bearing deposits with the Deposit and Loan Bank and with the Bank of Naples.

The supervision of the branches of this institution is exercised by the Board of Trade.

Agrarian Legislation.—The Law of July 14 (No. 513) provides for the legal organisation of agricultural instruction given by travelling teachers, which needed regulation to insure its continuance, although the system has already developed throughout Italy and the benefits to national agriculture resulting from it are fully recognised. The Law has done away with the precariousness of the travelling professorships in agriculture by bestowing on the societies constituted to maintain them a definite legal status.

The other Law of July 14, 1907, provides regulations for an exact agricultural statistical inquiry, and for a census of live stock, with a view to finding out the total amount of animal and vegetable produce which the Italian agriculturists obtain from the land.

International Legislation.—Amongst the measures bearing an international

character we may note : the Royal Decree of January 17 (No. 13), which orders the full and complete execution of all Conventions between Italy and Switzerland securing equal privileges as regards fishing within waters common to the two States ; the Royal Decree of January 13 (No. 27), which enforces all the provisions of the agreement signed at Algeciras on April 7, 1906 ; that of March 30 (No. 114) concerning the Convention between Italy and Servia as to epizooty, and the other of the same date (No. 115), which confirms the Treaty of Commerce and Navigation between Italy and Servia of January 14, 1907 ; the Law of April 4 (No. 134), which confirms the Treaty of Commerce, Customs, and Navigation between Italy and Roumania and the final protocol annexed to it, of December 5, 1906 ; the Law of April 6 (No. 188), which confirms the Treaty of Commerce and Friendship between Italy and Ethiopia.

5. NORWAY.

[*Contributed by* Miss Sigrid Nœrup *of Christiania.*]

There was little legislation of any importance in Norway during 1906, most of the Acts being amending Acts only.

Protection of Workmen.—A Law of April 24, 1906, alters regulations of August 6, 1897, respecting the work in bakeries. These regulations were the result of the strong democratic movements now in progress in Norway. They conferred great benefits on workmen with regard to the hours of work and the conditions of labour—for instance, no work was to be done between 8 p.m. and 6 a.m. This is now altered, and the masters of bakehouses are allowed to employ men from 5 a.m. to make the dough. They must not, however, employ more than *one* man at each oven, and three men at the most in the whole bakery. This concession has caused not a little excitement, being regarded as an infringement of the workmen's rights.

Mediation of Work.—A Law of June 12, 1906, dealing with mediation or distribution of work directs all such local districts, as the King names, to establish a public office for mediation of work of every kind. The King has also the right to appoint one or more of these local offices as a central office or offices for larger districts. Every office is managed by a board, appointed by the local authorities, and consisting of a chairman and an equal number of employers and employés. All mediation is to be gratis, but the expenses of special inquiries are to be borne by those requiring them. Expenses of registration are defrayed by the Government. The Government also makes an annual grant to every local district with less than 30,000 inhabitants. The offices act during any kind of strike.

Unemployed Workmen.—A Law, regulating State and municipal contributions to the Norwegian distress committees (unemployed workmen's

funds), provides that such committees as comply with the conditions of the Act are to be entitled to one-fourth of the amount spent in assisting unemployed persons insured with them and living in this country, being either natives or having lived in Norway the last five years. No applicant is to have any right to money relief, unless he has been a member the last half year and paid his subscription for at least twenty-six weeks after last admission. Such relief must not be given, moreover, for a longer period than ninety days during twelve months. The applicant is bound to accept any work offered him by the distress committee. The committee in most of these cases works in co-operation with the "office for mediation of work," mentioned above.

Compensation to Workmen.—A Law amends that of July 23, 1894, respecting compensation to workers for accidental injuries suffered in the course of their employment. This Act applies to employment by an employer on, in, or about any industrial, commercial, manufacturing, or building work, any mining work, quarrying, engineering, or hazardous work, etc., carried on by or on behalf of the employer as part of his trade or business, any work carried on by or on behalf of the Government of Norway or by any local authority as employer. The Act fixes the minimum compensation for total disablement at Kr. 150 per annum (about £80) and the maximum at 60 per cent. of the wages. For partial disablement the compensation is at a considerably lower rate.

"Storthing" Electoral Amendments.—Act of March 29, 1906, is only an amending law. The last Act on the subject was passed no longer ago than 1905, and is of great importance, introducing as it does direct election of the *one* candidate in each electoral district instead of through representatives from the same district.

Aliens.—A Law of June 2, 1906, forbids non-natives or non-residents to fish within the waters of Norway. In fishing, Norwegian fishing-vessels or boats and fishing-tackle, belonging either to natives or residents, must be used.

The Law which gave the Swedes privileges in preference to other aliens is abolished.

A temporary Law provides that the liberty of using Norwegian woods, mines, or waterfalls is not to be given to non-natives or to companies, unless every one belonging to such company is personally responsible. Nor can permission be given to any company, unless the board of directors is in Norway. The Act amends the law of April 1906, which related to waterfalls only. The Government has made proposals for settling the matter and finally, but the "Storthing" has not found time yet to give it attention.

Antiquities.—There is a growing interest in the records of the past, and it is evinced in a new Law providing for the fencing and preservation of ancient remains, dating from an early time or the Middle Ages, such as buildings or

architectural memorials, sculptures, stones, tombs, vases, arms, ornaments, and, generally, all objects of antiquarian interest. Such antiquities are now made the property of the Government. Any person finding an object of antiquity must give notice to the police or a Governmental Department, as representating the State as owner. Finders complying with this requirement are entitled to compensation.

All other Acts which passed in 1906 are merely of local interest.

6. SWEDEN.

The summary of legislation has been delayed owing to the regrettable death of Mr. Nils Setterwell, of Stockholm, the contributor.

7. SWITZERLAND.

[*Contributed by* CARL WIELAND, ESQ., LL.D., *of Basle.*]

Supply of Water Power to Foreign Countries.—By a Resolution of the Federal Assembly, March 31, 1906, electricity obtained from the national water power may only be supplied to foreign countries with the sanction of the Federal Council. The permission will be granted if the water power is not being employed in Switzerland. At most this permission can only extend over twenty years, and it may be withdrawn for reasons connected with the public welfare. Such withdrawal must, however, be accompanied by compensation. In case of a dispute the amount of such compensation will be determined by the Federal Tribunals.

Punishment of Anarchist Crimes.—Law of the Federal Assembly, March 30, 1906. Special penalties for anarchist crimes have existed in Switzerland since 1894. By a law then issued, a penalty was imposed on the use of explosives with criminal design, and on the incitement or persuasion to commit crimes of which the intention was to destroy general security. The scope of the law has been widened this year by the inclusion of an important additional clause: Any one who publicly incites to the commission of anarchist crimes or encourages such acts, or who publicly extols crimes of this kind, with the intention of instigating others to commit such acts, is liable to imprisonment.

8. UNITED STATES OF AMERICA—STATE LEGISLATION.

[*Contributed by* R. NEWTON CRANE, ESQ., *of the Middle Temple.*]

The sessions of the Legislatures are biennial in all States and Territories of the United States except in Georgia, Massachusetts, New Jersey, New York, Rhode Island, and South Carolina, where they are annual, and in Alabama, where they are quadrennial. As a large majority of the Legislatures which have biennial sessions meet in the odd-numbered years, there were no fewer than forty-one States in which the legislative machinery was at work

in 1905. The output was voluminous—no fewer than 13,530 laws and resolutions having been passed—rather than valuable. Nevertheless, in some instances important additions have been made to the Statutes, and in others the enactments are noteworthy as showing tendencies toward attempts, at least, to do away with old forms and methods of control, and to prevent abuses which are popularly supposed to result from the control of legislation being out of the hands of the people.

Statutes declared Unconstitutional.—Before referring to new legislation it is interesting to observe that the Courts of highest authority in the various States have declared more than fifty laws recently passed by previous Legislatures to be unconstitutional, and therefore invalid. For example, the following laws were pronounced invalid for this reason : in Alabama, a law making it a misdemeanour for an employé to abandon a written contract in order to make a similar agreement with another party ; in Kansas, a law establishing a branch State penitentiary and oil refinery to be operated by convict labour ; in Missouri, a law providing that wages shall be paid in money, or upon an order redeemable in money, on the ground that it abridges freedom of contract ; in New Hampshire, a law prohibiting the use of trading stamps ; in New York, a law limiting the labour of employés of an independent contractor for public work to eight hours a day ; in the same State, a law limiting employment in a bakery to ten hours a day or sixty hours a week ; in Ohio, a law directing that official and fiduciary bonds of over $2,000 must be guaranteed by a surety company ; in South Carolina, a law prohibiting trusts or combinations, and, in Washington, an Act requiring horse-shoers to pass an examination. This last was declared unconstitutional, as the trade is not one affecting the health, welfare, and comfort of the inhabitants, and therefore the regulation was not one within the police power.

Amendments to Constitutions.—In twenty States propositions are pending to amend the Constitutions. These have to do with such matters as the increase of salaries of officials of the State, particularly Judges ; the tenure of office of State employés ; the provision of voting machines, by which greater secrecy in the ballot may be secured ; the levy of an income tax ; exemption of public institutions from taxation ; establishing the initiative and referendum ; the appointment of commissions to sit as judges to relieve the congestion of litigation, and the forbidding of legislators to accept privileges from telegraph and telephone companies and common carriers.

Among the amendments adopted in 1875 were the following : In Connecticut, providing for the use of voting machines at elections ; in New York, that the Legislature shall have power to increase Judges in any judicial district, up to one Justice for every 60,000 inhabitants, and that any Judge of the Supreme Court when not sitting as an Appellate Judge may hold a term of court in any county or judicial district in the State ; in Ohio, relieving State Local Government and school bonds from taxation. In Oregon, an

amendment to the Constitution providing for the extension of the right of suffrage to women was defeated.

Marriage.—In Michigan the Legislature has enacted a law prohibiting the marriage of one who has been confined in any public institution or asylum as an epileptic, feeble-minded, imbecile, or insane, except upon a verified certificate of complete cure, and of there being no probability of the transmission of such person's defects to the issue of the proposed marriage; the marriage of any such person without such certificate, or the procuring of such a marriage, is made a felony. Nebraska declares marriage between first cousins of the whole blood void. Kansas forbids the issuance of a licence for marriage of a male under twenty-one or of a female under eighteen, except with the consent of the parent or guardian; and if the male is under seventeen or the female is under fifteen, the consent of the Probate Judge must also be obtained.

Divorce.—Pennsylvania has enacted a law authorizing the Governor of the State to appoint Commissioners to codify the Divorce Laws, and to co-operate with other States in securing uniformity of divorce legislation in the United States. California defines "extreme cruelty (which is cause for divorce) as the wrongful infliction of grievous bodily injury or grievous mental suffering." Pennsylvania makes "hopeless insanity" a cause for divorce.

Sale of Intoxicants.—During 1905 twenty-eight States enacted a total of ninety-two laws relating to the sale of intoxicants, but only a comparatively few of these laws are of importance. Apparently a general idea prevails in many of the States that the greater inconvenience attending the consumption of drink, the less there will be consumed. In New Hampshire innkeepers are now prohibited from serving drink at any table in a room where drink is usually sold, while a saloon-keeper may not serve it at a table. The new Licensing Act, which has supplanted the Prohibition Law in Vermont, provides that no booth, stalls, or obstructions shall be allowed in a bar-room, and furniture of any description is forbidden therein. In Georgia it is a misdemeanour to be intoxicated in any public place. In Montana and South Dakota it is an offence punishable by fine or imprisonment to sell or give away intoxicants within five miles of any lodging-camp, sawmill, sheep-shearing camp, railway, or irrigation ditch or canal in course of construction; and in Nebraska it is a misdemeanour to sell drink within five miles of labour-camps where twenty-five or more men are employed. In New Mexico saloons are not permitted within five miles of a United States Government sanatorium, two miles of a military reservation, one mile of the College of Agriculture, or within half a mile of the State University or the School of Mines, or within three miles of a labour-camp. In Wisconsin it is forbidden to grant licences to sell within 300 feet of any public or parochial school. Nearly all of the States have now laws making it a misdemeanour, punishing it with a heavy fine, to sell intoxicants to minors or women.

Public Health.—One of the most important executive functions recently authorised by legislation is the maintenance of laboratories for chemical and bacteriological work. In 1905 such laboratories were established by law in California, Connecticut, North Carolina, Wisconsin, and Utah. The production and distribution of antitoxin have been provided for in Illinois and California. Osteopathy has been officially recognised in Colorado, Indiana, South Dakota, Montana, New Mexico, Vermont, Nebraska, and Tennessee. Laws regulating the practice of optometry were passed in New Mexico and Oregon. With respect to the licensing of embalmers new laws were passed in Illinois, Massachusetts, Minnesota, North Dakota, Okahama, and Wisconsin, and old laws were amended in several other States. In Tennessee vaccination may be made compulsory by local boards of health, so also in South Carolina and in West Virginia, when small-pox is epidemic.

Crimes and Offences.—In Oregon a law has been enacted providing that wife-beating may be punished by whipping. The lashes are not to exceed twenty in number, and it is left to the discretion of the Court to impose whipping, or fine, or imprisonment. In California a special law has been passed, making it a felony to maliciously drive any iron, steel, or other substance, sufficiently hard to injure saws, in any wood intended to be manufactured into timber. In North Dakota punishment is provided against maliciously putting in stacks of grain any substance which will injure a threshing machine. If the injury results in death the offence is deemed manslaughter in the first degree. The violators of the law are also responsible in civil damages. Minnesota has increased the penalty for robbery in the first degree to a maximum of forty years. On the other hand, in the adjacent State of South Dakota the minimum penalty has been reduced from ten years to one year. Eleven States have passed laws for the restriction of gambling. Texas has amended its laws prohibiting betting on horse-racing, so as to permit it on the day and within the inclosures where such races are run. In California every person who sells or offers for sale any ticket to a theatre or other place of amusement at a price in excess of that charged by the management, is guilty of a misdemeanour. Oregon punishes, by a fine of $100 to $1,000, the exposure to public view of any person in a state of trance, sleep, or entire or partial unconsciousness, which shall have been induced by hypnotism, mesmerism, or any other form of the will-power. Sixteen States have passed twenty-three laws in regard to cruelty to animals.

Employment of Convict Labour.—In Indiana the new regulation of convict labour provides for convict trade schools and military drill. Goods are to be manufactured to be used in State Institutions, and the surplus product is to be sold in the public market. Massachusetts authorises the employment of inmates of Penal Institutions in caring for public lands and buildings. Oregon permits private contract labour in the penitentiaries,

but the convicts are not to work over ten hours a day, and the State is to receive not less than thirty-five cents a day for each convict. In New Mexico, Colorado, Illinois, and Maine, convicts may be employed in constructing and mending public roads and highways. In South Dakota authority was given to establish a hard fibre twine and cordage plant, and also a factory for the manufacture of shirts and workmen's overalls.

Indeterminate Sentence, Parole, Pardon, and Probation of Convicts.—In Michigan a general indeterminate sentence law authorises the Court to impose a minimum and a maximum sentence, and the parole of convicts by a Pardon Advisory Board after serving the minimum sentence. In Oregon, under a somewhat similar law, a convict may be paroled by the Governor of the State at any time after having served the minimum sentence. In Kansas, New Jersey, Oregon, South Dakota, and Texas laws were passed authorising parole. North Carolina authorises the Governor of the State to grant conditional pardons, and if the conditions are violated, the convict may be re-arrested. In Michigan the Court, whenever satisfied that a convict out on probation has reformed, and will not thereafter pursue a life of crime, may terminate his probation and finally discharge him from completing his sentence.

Law-making, Elections, Suffrage.—"Lobbyists" are men who are employed to secure the successful passage of Bills through a Legislature, and in order to minimise the evils which have long been recognised in connection with their over-zealous work, several States have passed stringent laws. In Wisconsin "lobbyists," or legislative agents, must be registered. In Wisconsin no such agent may deliver a written statement to a member of the Legislature concerning any Bill without first depositing twenty-five copies of such statement with the Secretary of State. In Minnesota the prohibition of lobbying was extended to include interference not only with members, but with members-elect. In New Hampshire the evils of unrestricted manhood suffrage have become painfully apparent, and, as a result, no one can now vote until after passing an educational test. Five lines of the Constitution, drawn by lot, must be read by the intending voter, and one line must be written and signed. In Wyoming an elector, necessarily absent from home on election day, may, upon proving that fact in a prescribed way to the clerk of the county in which he happens to be, vote by post. In many States the laws to prevent corrupt practices at elections were made more stringent. In Wisconsin and Minnesota limited companies organised for pecuniary profit are forbidden to make contributions for aiding in the nomination or election of any person

BRITISH EMPIRE.

I. UNITED KINGDOM.

[*Contributed by* EDWARD MANSON, ESQ.]

Public General, 58; Local and Personal, 212.

Supply (No. 1).

Army (No. 2).—The Army (Annual) Act B. E., with its instructive constitutional preamble, continues the Army Act for one year more and legalises a standing army of 204,100 men. It further amends the Army Act by authorising detention as a punishment for military offences in lieu of imprisonment, and in the matter of the mode of complaint by soldiers.

Seed Potatoes in Ireland (No. 3).—This Act validates the supply of seed potatoes to occupiers of land in Ireland and provides for repayment of loans made for such purpose.

Post Office (No. 4).—A small but useful reform. Money orders may under this Act be obtained by arrangement for transmission of small sums to foreign States and British Protectorates.

Seamen's and Soldiers' Certificates (No. 5).—Forgery of service or discharge certificates is made summarily punishable with imprisonment, with or without hard labour, and a penalty is imposed on persons giving or using false statements for enlistment.

Police.—No. 6 arms the Commissioners for inquiring into the duties of the Metropolitan Police in cases of drunkenness, disorder, and solicitation, with all the powers vested in the High Court for compelling the attendance of witnesses, the production of documents, and the punishing of contempt. Witnesses are not to be exempt from answering questions which may criminate, but if making full disclosure are to be entitled to a certificate of indemnity.

Police.—No. 7 deals with the superannuation of constables and pensions.

Revenue (No. 8).—This is the annual Finance Act. The duty on tea is reduced to five pence a pound: also on stripped tobacco. The income tax is continued at one shilling in the pound.

Education, *Crippled Children* (No. 10).—School Boards in Scotland may make special provision for the education, medical inspection, and con-

veyance to and from school of epileptic or crippled or defective children between five and sixteen.

Reserve Force (No. 11).—The regulations of the Reserve Forces are extended to men when outside the United Kingdom.

Municipal Corporations.—No. 12 extends the immunity from disqualification to interests by reason of membership in any society registered under the Industrial and Provident Societies Acts (see s. 12 [*e*]).

Wireless Telegraph.—No. 13 continues the Wireless Telegraphy Act, 1904.

Alkali Works (No. 14).—Alkali Works in this Act means every place for (*a*) the manufacture of sulphate of soda or sulphate of potash, or (*b*) the treatment of copper ores by common salt or other chlorides, whereby any sulphate is formed in which muriatic acid gas—a noxious and offensive gas—is evolved. It covers a long list of works set out in the schedule. Henceforth such works are to be carried on in such a manner as to secure the condensation, to the satisfaction of the chief inspector, of the muriatic acid gas evolved. Works are to be registered and inspectors appointed by the Local Government Board—large powers to enter, examine, and test being given to such inspectors—and an annual report is to be made by the Chief Inspector to the Local Government Board. Fines for offences are imposed and made recoverable in the County Court.

Extradition (No. 15).—Bribery is now to be an extradition crime as between the United Kingdom and the United States.

Justice of the Peace (No. 16).—This Act abolishes the property qualification for a Justice of the Peace: also the residential qualification. It is enough if the person to be appointed resides within seven miles of the county. Solicitors are made eligible for appointment, but are not to practise before the justices of the same county.

Bills of Exchange (No. 17).—A banker receives payment of a crossed cheque for a customer within s. 82 of the Bills of Exchange Act, 1882, if he credits the customer's account with the amount of the cheque before receiving payment of it.

Customs (No. 18).—The tea duty in the Isle of Man is reduced: the additional duties on tobacco, spirits, and ale are continued.

Deanery of Manchester.—No. 19 makes provisions for the revenues of the Deanery.

Customs.—No. 20 regulates the duty on methylated spirits. The stamp duty on an award is made uniform—10*s*.

Ground Game (No. 21).—An occupier may now kill ground game between Sept. 1 and Dec. 10 otherwise than by the use of firearms.

Post Office (No. 22).—This is a boon to the blind. It empowers the Treasury to cheapen the rate of transmission for books and papers impressed for the use of the blind.

Charitable Loan Societies, Ireland.—No. 23 amends the law with reference to promissory notes for loans by these societies.

Solicitors (No. 24).—The Registrars of Solicitors—so the Court of Appeal decided in *Rex.* v. *A Solicitor* (71 L.J.K.B. 36: [1902], 1 K.B. 128)—had no power to refuse to renew the certificate of an undischarged bankrupt. This Act removes the anomaly and gives the necessary power. It also entitles the Registrar of Solicitors to inspect the file of proceedings in bankruptcy without fee.

Open Spaces (No. 25).—The law is consolidated in great detail. Consecrated burial grounds are not to be used for playgrounds except with the bishop's licence.

County Councils may purchase and lay out land as public walks or pleasure grounds or contribute to their maintenance.

Supply (No. 26).

Fertilisers and Food Stuffs (No. 27).—Every seller of a soil fertiliser artificially treated in the United Kingdom or imported from abroad is to give the purchaser an invoice of the name of the article and the percentages of nitrogen, soluble phosphates, insoluble phosphates, and potash contained, and such invoice is to operate as a warranty. There is an analogous provision as to food for cattle or poultry, with a further implied warranty that such food is suitable to be used as such.

The Board of Agriculture is to appoint a chief analyst. Agricultural analysts may also be appointed by County Councils, and any purchaser of a fertiliser or food stuff is to be entitled to a fee to submit a sample for analysis and to have a certificate of the result. Sellers giving no invoice, or a false one, or using a deleterious ingredient, are to be liable for a first offence to a fine of £20 and for any subsequent offence to a fine of £50.

Crown Lands.—No. 28 deals with the management of Crown Lands.

Local Loans (No. 29).

Marriage, Deceased Wife's Sister (No. 30).—This Act puts an end to the anomaly by which a person who had contracted a lawful marriage with his deceased wife's sister in a British possession found his children in the United Kingdom incapacitated from succeeding to land, dignities, or honours. It has now become superfluous since the legalisation of marriage with a deceased wife's sister by the Act of the last session.

Dogs (No. 32).—In Scotland the owner of a dog which worries sheep has long been liable without proof of the "scienter." This principle is now introduced into England. The owner of a dog is to be liable in damages for injury done to any one by such dog; and it is not necessary to show a previous mischievous propensity in the dog, or the owner's knowledge of such previous propensity, or to show that the injury was attributable to neglect on the part of the owner. "Cattle" is a genus unknown to natural history, and includes horses, mules, asses, sheep, goats, and swine. The occupier of premises where the delinquent dog is kept is to be presumed to be the owner unless he proves that he is not A dog that is proved

to have injured cattle or chased sheep may be dealt with as "a dangerous dog" under s. 2 of the Dogs Act, 1871. The Board of Agriculture may make orders for dogs in public resorts wearing collars with the name and address inscribed. A dog not complying with such orders may be seized as a stray dog. Stray dogs may be seized by a police officer, and if not claimed within seven days after notice to the owner may be sold or destroyed.

Sheep dogs are exempted from licence duty.

Local Government.—No. 33 transfers to the Local Government Board certain powers of the Treasury.

Prevention of Corruption (No. 34).—The giving and taking of secret commissions have long been a blot on our commercial system. The present Act deals very severely with such practices and will no doubt help to educate the public conscience. Paraphrasing in such a case is dangerous. The *ipsissima verba* of the material sections are therefore given:

If any agent corruptly accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gift or consideration as an inducement, or reward for doing or forbearing to do or for having, after the passing of this Act, done or forborne to do any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business, or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do or for having, after the passing of this Act, done or forborne to do any act in relation to his principal's affairs, or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs, or business, or

If any person knowingly gives to any agent, or if any agent knowingly uses, with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which, to his knowledge, is intended to mislead the principal, the agent or person so offending is to be guilty of a misdemeanour and liable on indictment to imprisonment for two years, with or without hard labour, or to a fine not exceeding £500, or to both, and on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine of £50, or both.

The widest interpretation is given to the terms of the Act: "consideration" includes valuable consideration of any kind; "agent," any person employed by or acting for another, and "principal" includes an employer.

To prevent an abuse of the Act, a prosecution under it is not to be instituted without the consent of the Attorney or Solicitor-General. The Act extends, with qualifications, to Scotland.

Fatal Accidents and Sudden Deaths (No. 35).—The machinery for

inquiring into fatal accidents in Scotland is amended by providing for a verdict being returned, and provision is made for public inquiries into cases of sudden and suspicious deaths.

Musical Copyrights (No. 36).—Any person in possession of any pirated copies of a musical work, unless he can prove that he acted innocently, is to be liable to a fine of £5, and on a second conviction to two months' imprisonment. Any constable may take into custody, without warrant, any person selling in the street pirated copies of any such musical work as may be specified in any general written authority addressed to the chief officer of police, and signed by the apparent owner of the copyright requesting the arrest at the risk of such owner.

Labourers in Ireland.—No. 37 deals with the application of the Ireland Development Grant.

Statute Law Revision (Scotland) (No. 38).

Intoxicating Liquors.—No. 39 regulates the hours for closing licensed premises in Ireland, with the usual exemption in favour of *bonâ fide* travellers.

Marriage with Foreigners (No. 40).—The object of this Act is to enable a British subject desirous of marrying a foreigner in a foreign country to comply with the foreign law by obtaining from the registrar, on due application, a certificate that no legal impediment to the marriage has been shown. Similar certificates, by arrangement between His Majesty and foreign countries, are to be issued in the case of a foreigner desirous of intermarrying in this country with a British subject.

Marine Insurance (No. 41).—This is an admirably drafted Act, codifying the law of marine insurance within the compass of 94 sections. Ss. 1-3 deal with the Contract of Marine Insurance; ss. 4-15 with Insurable Interest; s. 16 with Insurable Value; ss. 17-21 with Disclosure and Representations; ss. 22-31 with the Policy; s. 32 with Double Insurance; ss. 33-41 with Warranties; ss. 42-49 with the Voyage; ss. 50-51 with Assessment of Policy; ss. 52-54 with the Premuim; ss. 55-63 with Loss and Abandonment; ss. 64-66 with Partial Losses; ss. 67-78 with the Measure of Indemnity; ss. 79-81 with the Rights of Insurance Payment; ss. 83-84 with Return of Premuim; s. 85 with Mutual Insurance. Ss. 86-94 are Supplemental. The Schedule gives a Form of Policy with Rules for Construction.

The same skilled hand has been at work here which drafted the Bills of Exchange Act and the Sale of Goods Act, and there is every prospect that the same success will attend this further improvement in the form of our mercantile law.

Intoxicating Liquors (No. 42).—Justices acting for a borough under the Licensing Acts may act by a majority.

Betting in Streets (No. 43).—It is impossible to be sanguine as to any legislative effort to deal with so inveterate a vice as gambling. This is a well-meant attempt to check some of its more demoralising forms. "Any person frequenting or loitering in streets or public places, on behalf of

himself or any other person, for the purpose of bookmaking, or betting, or wagering, or agreeing to bet, or wager, or paying, or receiving, or settling bets," is to be liable to a fine of £10 : £50 or imprisonment for a third offence. Betting with a person under sixteen is also punishable with fine or imprisonment. A constable may take the offender into custody without warrant.

"Public place" has a wide interpretation, framed to meet the well-known difficulties to which the expression has given rise.

Burials.—No. 44 dispenses with consent to users of land as a burying-ground by owners and occupiers of houses built since the land was so appropriated.

Offensive Matter.—No. 45 amends the law as to removal of such matter within the Metropolitan Police District.

Deputies (No. 46).—This gives power to the authorities having the appointment to certain offices, Recorderships, Stipendiary Magistracies, and Clerkships of the Peace to appoint deputies to act temporarily.

Trade Unions (No. 47).—This Act amends the law of conspiracy, sanctions peaceful picketing, abolishes the liability for interfering with another person's business, and ends by providing (s. 34 (1)) that "an action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the Trade Union in respect of any tortious act alleged to have been committed by or on behalf of the Trade Union, shall not be entertained by any Court."

Merchant Shipping (No. 48).—This Act (Part I) extends the loadline and other safety provisions of the Merchant Shipping Act, 1894, to all foreign ships while they are within any port in the United Kingdom. Part II lays down regulations for passenger and emigrant ships. Part III deals with seamen's food. Part IV with the relief and registration of distressed seamen. Part V is miscellaneous, and deals, *inter alia*, with the registration of ships' names, mortgages on ships sold to foreigners, crew space, appeals in case of shipping casualties, mates' certificates, desertion, etc.

Census of Production (No. 49).—By this Act a scheduled list of persons, occupiers of factories and workshops, owners and managers of mines and quarries, builders, contractors for railroads, tramways, harbours, docks, etc., and every person who by way of trade or business gives out work to be done elsewhere than on his own premises, is required to make a yearly return in an official form of the nature of the trade or business, particulars of the output, the number of days on which work carried on, the number of persons employed, and the power used, and a Board of Trade Report based on such returns is to be laid before Parliament. Individual returns are not to be published nor particulars to be disclosed. Advisory committees of persons conversant with the conditions in various trades and industries may be appointed to assist the Board of Trade.

National Galleries of Scotland (No. 50).—Establishing National Galleries' Trustees for Scotland.

Expiring Laws (No. 51).

Land Tax Commissioners.—No. 52 appoints additional Commissioners.

Accidents in Mines and Factories (No. 52).—Notices of accidents in mines, quarries, factories, and workshops, with particulars, are to be sent at once to the Inspector of the district.

Tenant Compensation (Ireland) (No. 53).—This is to provide compensation for improvements to the tenants of houses, shops, and other buildings in Ireland on quitting possession. No contracting out is allowed.

Public Trustee (No. 55).—This Act supplies a long-felt want. It constitutes a public trustee to

(*a*) act in the administration of estates of small value:
(*b*) act as custodian trustee:
(*c*) act as an ordinary trustee:
(*d*) be appointed to be a judicial trustee:
(*e*) be appointed to be the administrator of the property of a convict under the Forfeiture Act, 1870.

In each of these cases the powers and duties of the public trustee are defined and regulated by the Act.

The Consolidated Fund is to be liable to make good all sums required to discharge any liability which the public trustee, if he were a private trustee, would be personally liable to discharge. The fees to be charged by the public trustee are to be fixed by the Treasury with the sanction of the Lord Chancellor. The public trustee may employ solicitors, bankers, accountants, brokers, and such other persons as he may consider necessary, and in doing so may take into consideration—subject to the interests of the trust—the wishes of the creator of the trust, the other trustees (if any) and the beneficiaries. The accounts of any trust are, on application by any trustee or beneficiary, to be audited by such solicitor or public accountant, as may be agreed by the applicant and the trustees, in default of agreement by the public trustee or some person appointed by him.

Agricultural Holdings.—No. 56 amends the law by providing for compensation for damage by game, which means deer, pheasants, partridges, grouse, and black game. A tenant, any custom of the country to the contrary notwithstanding, is to have full freedom as to cropping and the disposal of produce. A landlord is to pay compensation for unreasonable disturbance of a tenant by notice to quit.

Meals for Children (No. 57).—A local education committee, or "School Canteen Committee," is empowered to provide meals for children in attendance at any public elementary school in their area. The parent is to be charged for every meal an amount to be fixed by the committee, and is liable to pay such amount as a civil debt unless the committee are satisfied that he is unable to do so "by reason of circumstances other than his own

default." The cost incurred may, with the sanction of the Board of Education, be defrayed out of the rates.

Non-payment by a parent is to involve disfranchisement.

Compensation to Workmen (No. 58).—The first sub-section of this Act runs as follows:

If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act. "The workman forfeits his right if the accident is attributable to serious and wilful misconduct" on his part. The scale fixed by the Schedule is limited in case of death to £300: in case of partial or total disablement to £1 a week. An employer may contract himself out of the Act by agreeing to a Friendly Society's scheme certified by the Registrar as providing a scale of compensation not less favourable to the workman.

An employer is liable for his sub-contractor. The Act applies to masters of ships, seamen, and apprentices to the sea service, but not to persons in the naval or military service of the Crown.

"Workman," with certain exceptions, means "any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing."

2. ISLE OF MAN.

[*Contributed by* His Honour S. Stevenson Moore, *Chief Deemster.*]

There is little legislation here to report. So many Acts of Tynwald have been passed during the last twenty years that the legislation is practically on the same lines as in England. But as with the Imperial Parliament, amending Acts have to be passed from time to time. The Acts of more general importance were, in 1906: The Pedlars and Street Traders Act, 2; in 1907: The Copyright Act; The Loans (Infants) Act; The Regulation of certain Classes of Shops Act; The Gaming and Betting Act; The Obscene Publication and Indecent Advertisement Act; The Higher Education Act, to provide a modicum of Secondary Education; and finally, an Educational Endowments Act, which enables the Council of Education to make schemes for the application of educational endowments.

3. THE CHANNEL ISLANDS.

[*Contributed by* T. Nicolle, Esq.]

There was no legislation of general interest this year either in Jersey or Guernsey.

II. BRITISH INDIA.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—8.

Incumbered Estates.—The Sindh Incumbered Estates (Amendment) Act, 1906 (No. 1), is confined to some amendments of detail in the Act of 1896, but gave rise to an interesting debate as to the policy of advancing public money for the relief of insolvent landowners, as to the discretionary powers of managers of these estates for setting aside incumbrances held to be inequitable, and as to the exclusion of such cases from the jurisdiction of the civil courts. It is interesting to note the tendency in British India to withdraw from the cognisance of the ordinary civil courts matters which in France would be treated as belonging to the sphere of *droit administratif*.

Coinage.—The Indian Coinage Act, 1906 (No. 3), consolidates as well as amends the law and contains the whole of the Indian Statute law on coinage. It gives new powers of issuing nickel and bronze coins of small denominations, and alters the provisions of the previous law as to coin which has been diminished in weight, and coin which has been defaced. Where a coin is officially cut or broken on either of these grounds the tenderer gets the nominal value, if the diminution of weight is due to fair wear and tear, and if the defacement has not been fraudulent. Formerly the tenderer of a rupee diminished in weight by fair wear and tear got its value as silver, but now that the rupee has become a token instead of a standard coin, its metal value is much below its nominal value. The provision as to coin defaced without fraud covers the common case of rupees used for purposes of ornament.

Cocaine.—The Excise (Amendment) Act, 1906 (No. 7), gives power to local governments to treat cocaine as an "intoxicated drug," and regulates the trade in it accordingly. This power already existed under local Acts in the provinces under the local legislatures of Madras, Bombay, and Bengal, but not in other parts of British India. The other four Acts passed by the Governor-General's Council present no features of general interest.

2. MADRAS.

Acts passed—0.

3. BOMBAY.

Acts passed—2.

Courts.—The Sindh Courts (Amendment) Act, 1906 (No. 1), establishes for the province of Sindh a chief court, called the Judicial Commissioners'

Court, and consisting of not less than three judges, of whom one must be a barrister of five years' standing. This Court takes the place of the Courts previously known as the Sadar Court of Sindh, and the District Court, and Court of Sessions of Karachi.

Mámlatdárs are subordinate revenue officers who exercise summary jurisdiction in possessory suits about land. The Mámlatdárs Courts Act, 1906, which supersedes and repeals an Act of 1876, amends the procedure in these suits, and confines the jurisdiction to rural, as distinguished from urban, land. The Act is drawn with illustrations, like those in the Penal Code, showing the classes of cases in which jurisdiction may be exercised.

4. BENGAL.

Acts passed—4.

Court of Wards.—The Bengal Court of Wards (Amendment) Act, 1906 (No. 1), amends the procedure under the Act of 1879, and in particular enables the Court of Wards to retain possession of an estate after the death of a "disqualified" proprietor, or after the removal of his disqualifications, until the liabilities on the estate have been discharged.

Land Registration.—The Bengal Land Registration (Amendment) Act, 1906 (No. 2), makes some amendments of detail in the machinery for the registration of proprietary interests in land under the Act of 1876.

Disorderly Houses.—The Bengal Disorderly Houses Act, 1906 (No. 3), arms magistrates of the first class with powers for the suppression of brothels and disorderly houses.

5. UNITED PROVINCES.

Acts passed—4.

Cocaine.—The United Provinces Excise Law Amendment Act, 1906 (No. 1), gives power to extend the meaning of the phrase "intoxicated drug," and seems to have the same object as the Act No. 7 of the Governor-General's Council.

Local Rates.—The United Provinces Local and Rural Police Rates Act, 1906 (No. 2), defines the liability of estates to the local rates, prescribes the mode of recovery and the conditions of relief, and regulates the appropriation of the rates recovered.

Local Government.—The United Provinces District Board Act, 1906 (No. 3), repeals and supersedes the North-Western Provinces and Oudh Local Boards Act, 1883; defines the constitution of the semi-elective district boards, which exercise limited powers of local government in rural districts; regulates the constitution and application of the district fund which is placed at the disposal of each board, and gives the local government and its officers large powers of control over the district boards.

6. PUNJAB.

Acts passed—2.

Land.—The Punjab Tenancy Act, 1837, made provision for the remission or suspension of rent, when, in consequence of a bad season, the Government had remitted or suspended payment of revenue, so as to make sure that the benefit of the remission or suspension should enure for the benefit of the occupier. But the machinery of the provision was defective, and in particular it did not distinguish sufficiently between cases where a tenant had and where he had not occupancy rights, or between cases where rent is payable in cash, and cases where rent is payable in kind, and takes the form of a share of the produce. The amending Act of 1906 (No. 1) substitutes new provisions on this subject.

Local Rates.—The other Punjab Act (No. 2) reduces the maximum amount of the local rates leviable under the Punjab District Boards Act, 1883.

7. BURMA.

Acts passed—4.

Motor-Vehicles.—The Burma Motor-Vehicle Act, 1906 (No. 2), gives the Local Government power to make rules for regulating the use of motor-vehicles, and follows generally the lines of the Bengal Act on the same subject.

Municipal Government.—The Burma Municipal Act (1898) Amendment Act, 1906 (No. 3), gives municipal authorities further powers (1) for the inspection of weights and measures and the seizure of false weights; (2) for preventing the slaughter of animals at unauthorized places; (3) for requiring court-yards, alleys, and passages to be paved for the purpose of efficient drainage; and (4) for prohibiting the establishment of a market for the sale of food or live-stock, except under a licence.

8. REGULATIONS UNDER 33 Vict. c. 3.

Regulations made—2.

Both the regulations made in 1906 relate to the new North-West Frontier Province. The first provides for cases where an appeal or an application for revision is referred to the Judicial Commissioner in respect of any decree or order which he has passed in another capacity or in which he is personally interested. The second extends to the Province, with some modifications, the Punjab Pre-emption Act of 1905, relating to rights of pre-emption in land.

III. EASTERN COLONIES.

1. CEYLON.

[*Contributed by* HERMAN A. LOOS, *First Crown Counsel, Ceylon.*]

Ordinances passed—23.

Education.—No. 5 provides for the introduction of a system of compulsory vernacular education in Municipal and Local Board towns, and in towns which have been brought under the operation of "The Small Towns Sanitary Ordinance, 1892."

No religious instruction shall be given in any school established under s. 6 of the ordinance.

Pearl Fisheries.—No. 8 confirms an agreement entered into in England between the Crown Agents for the Colonies, acting on behalf of the Government of Ceylon, and The Gulf Syndicate, Limited, for the lease to The Ceylon Company of Pearl Fishers, Limited, for a period of 20 years from the date of the lease, (*a*) of all that right or privilege which the Government had theretofore exercised and enjoyed of fishing for and taking pearl oysters on the coast of Ceylon between Talaimannar and Dutch Bay Point, and (*b*) of certain plots of land, for the sum of Rs. 310,000 to be paid annually by the Company.

It also conferred on the Crown Agents authority to execute the lease in favour of the Company.

Patents.—No. 15 assimilates the local law and procedure relating to the granting of patents for inventions to the system which is in force in England and most of the other British Colonies.

Vacations.—No. 1 provides for the establishment and regulation of vacations in the Supreme Court. Appeals in criminal cases and all applications and motions which are urgent must be heard and determined notwithstanding its being the vacation.

Wild Birds.—No. 10 amends the law with regard to the protection of wild birds. A schedule specifies the birds which are protected, and power is given to the Governor, with the advice of the Executive Council, to add to or expunge from the list the names of any birds. The exportation from Ceylon of any part of any protected bird is made an offence.

Irrigation.—No. 16 consolidates and amends the law relating to irrigation works and to the cultivation of irrigable lands.

The Central Irrigation Board of Ceylon has been done away with and the funds which were vested in the Board passed to the credit of the Colony; the debts and liabilities of the Board are made the debts and liabilities of the Colony.

The rate for maintenance of any irrigation work is to be assessed by the Government Agent of the province, and no maximum is fixed for such rate.

Widows' and Orphans' Pension Fund.—No. 13 makes radical changes in The Widows' and Orphans' Pension Fund Ordinance.

The rates at which pensions are to be paid are revised on the basis of certain tables attached to the Ordinance. Public officers appointed after the passing of the Ordinance are not allowed to contribute to the Fund, but abatements will be made from their salaries equivalent to the contributions which would have been levied from them under the principal Ordinance, and the amounts will be credited to the general revenue of the Colony. The pensions of such officers will be paid from the general revenue on the basis of tables attached to the Ordinance.

Firearms.—No. 14 consolidates and simplifies the law with regard to the possession and use of firearms.

2. HONGKONG.

[*Contributed by* W. M. Graham-Harrison, Esq.]

Ordinances passed—17.

Summary Offences (Further Amendment) (No. 1).—This Ordinance amends the Summary Offences (Amendment) Ordinance of the preceding year by the substitution of a new definition of "thoroughfare" and "public place."

Magistrates (Amendment) (No. 2).—The Magistrates Ordinance, 1890, is amended as respects the following matters, viz. the method of dealing with a witness who refuses to be sworn or answer questions, the indictable offences which may be dealt with summarily, and the power of Justices of the Peace to issue search warrants.

Lunacy.—No. 3 interprets the Imperial Act of 1890 in its application to the Colony. No. 3 is itself amended verbally by Ordinance No. 9 of 1906.

Appropriation (Nos. 4 and 13).

Married Women's Property (No. 5).—This Ordinance reproduces the Imperial Act of 1882 (except ss. 20-22) and the Imperial Act of 1893.

It is to be deemed to have come into force on January 1, 1883, *i.e.* more than twenty-three years before the date on which it was passed.

Asylums (No. 6).—The Governor of the Colony is given power to declare places and institutions to be asylums, and provision is made for the appointment of visitors. A person may be detained temporarily for observation, for not more than fourteen days in all, on the written order of any magistrate,

or if suffering from delirium tremens. For any longer detention a certificate of two medical practitioners, countersigned by a magistrate, is required.

Doctors, police officers, etc., acting under the Ordinance in good faith and with reasonable cause, are protected.

Provision is also made as to the detention in asylums of insane criminals.

Prospecting and Mining.—No. 7 deals with the grant of licences by the Governor to prospect and work mines.

Naval and Military Works.—No. 8 authorises the construction by the Admiralty of certain works on the foreshore and sea-bed at Victoria.

New Territories Land (Amendment).—No. 10 amends the definition of "land" in the New Territories Land Ordinance, 1905.

Praya Reclamation Fund Transfer.—No. 11 transfers to the General Revenue certain moneys forming part of the Praya Reclamation Fund.

Regulation of Chinese (Amendment) (No. 12).—By this Ordinance the Governor is given power to extend Part III of the Regulation of Chinese Ordinance, 1888, to any part of the Colony.

Criminal Evidence.—No. 14 reproduces the Imperial Act of 1898.

Prepared Opium (Amendment) (No. 15).—This Ordinance makes amendments in the Prepared Opium Ordinance, 1891.

Merchant Shipping (Amendment).—No. 16 amends the Ordinance of 1899 with reference to the obstruction of wharves, etc., and to licensed and unlicensed junks.

Widows' and Orphans' Pension Fund (Amendment) (No. 17).—This Ordinance amends the Pension Fund Ordinance of 1900, as respects contributions to the pension fund, and the rules for calculating pensions.

3. STRAITS SETTLEMENTS.

[*Contributed by* T. Baty, Esq., D.C.L.]

Ordinances passed—30.

Currency (Ords. 1, 5, 23, 26).—The present year's Ordinances increase the depreciation fund, and allow telegraphic transfers, besides going some small way towards putting the finances of the Colony on a gold basis.

Taxation (Ord. 2).—A tax of 3 per cent. on income or profits is imposed on all bodies (including trustees) in whom property is vested upon "permanent" trusts, under which it escapes death duties. But property belonging to public, religious, educational, or charitable bodies is exempt if it is to be applied within the Colony or the Malay States. So is the property of trading or business bodies. It is difficult to see what is struck by the Act. The "property" of an unincorporated body can only be exempt from death duties by being affected by a charitable trust; for every other kind of

impersonal trust would be void as a perpetuity. It seems an unnecessary extension of Gierkeism to tax over again the moneys that persons, who have already been taxed as individuals, contribute towards a common object without the protection of Incorporation.

Pauperism (Ords. 6, 7, 9, 22).—Ord. 6 authorises the Governor to establish and staff Houses of Detention, to which persons convicted summarily (not otherwise) can be sent for an indefinite period if they are without means of subsistence and not physically able or willing to work for it. They may also be sent there if they were "found" begging: a singular provision, for the Act does not make any one "found" begging liable to be sent to these places; but only persons convicted of some offence whom the Court subsequently holds to have been so "found"—(when?).

The authorities are to endeavour to obtain suitable employment for the inmates, and any of them who "refuses or neglects to avail himself thereof' is liable to six months' imprisonment. It is not said what is to happen if he avails himself of the employment in such a fashion that the new employer dismisses him. The Governor may expel alien inmates if no work can be found for them. Persons who engage non-colonials from abroad, or soldiers from troops serving in the Colony, are liable to pay the expenses of enforcing the Act against them if they come within it. The wording of s. 9 leaves much to be desired: but the crux of the Act is found in s. 12: "Any person who being apparently a vagrant refuses or fails to accompany a police officer, or to appear before a Police Court, when required to do so for the purposes of this Ordinance, may be arrested" and is liable to three months' imprisonment. There is no provision under which a vagrant may be required to appear before a Police Court "for the purposes of this Ordinance."

Ord. 7 seems to have proceeded on a misreading of the Imperial Aliens Act, 1905 (which certainly lends itself to misunderstanding). By the Imperial Act, aliens may be expelled in two cases: (1) if convicted here of certain offences; (2) if "undesirables" on account of poverty or foreign conviction. The two sub-sections are coupled by "and," which the Colonial Act expands into "and . . . *also*," thus making *both* conviction in the Colony and "undesirability" necessary in every case of expulsion.

Again, the Colonial Act does not contemplate special proceedings for a certificate of undesirability, as the Imperial Act does; apparently on the assumption that a committal for "vagrancy" under Ordinance 6 would do instead. It speaks accordingly of the alien having been "convicted" of being a "vagrant." It is necessary to point out that no such power of conviction is contained in Ordinance 6. It merely says that convicted prisoners whom the Court "is of opinion" are also vagrants, may be dealt with in a particular way. (See generally, as to certificates of undesirability not being convictions, Sibley on *Aliens*, p. 69.) The wording of the Imperial Act, under which the conviction must be one for which the Court could

impose imprisonment without the option of a fine, is altered by the substitution of the word "penalty" for "imprisonment." (See also "Opium," *infra*.)

An old Pauper Immigration Ordinance (Indian Act, 41 of 1850) has the Imperial Aliens Act, 1905, in part engrafted upon it by Ord. 9. The old Act applied to all decrepit paupers, but the new one is apparently (but by no means certainly) restricted to non-colonials. The old one subjected shipmasters to $100 penalty for landing diseased, maimed, blind, or decrepit persons whose calamity might hinder them from earning a living, and who were without means. To these categories are now added idiots and lunatics; and, generally, any one who has not the means, in cash or physical ability, to earn the means of self-support. Nothing is said about political refugees; in fact, "banished" persons are expressly included, and wider powers of inspection and detention are given than are contained in the Imperial Act. There seems to be no penalty on shipmasters for making false returns. The words importing "physical" ability to earn are substituted for the Imperial Act's phrase "is in a position to obtain" means.

Succession (Ord. 11).—The policy of official administration inaugurated in 1880 has been extended to all cases where there is danger that the assets may be wasted. Previously it was employed only in the case of intestacy without known relatives.

Municipal Management (Ord. 12).—The Act of 1903 (*see* J.C.L. vi. 342), amending the Act of 1896, is now followed by further amendments. "Fences, platforms, and staging" are made "buildings," and so is "any structure connected with" buildings. The stringent provisions as to the registration of carts are made more stringent. One of the new clauses requires the owner of a cart to appear before the Registrar *whenever* called upon to do so. The policy of making officials judges is continued by making the Registrar of Carts the judge under the "cart" clauses. (*See* J.C.L. vi. 344.) It becomes unlawful to use the upper floors of a house for warehouse or other purposes without official leave in future ($100 plus $10 per diem fine). One provision throws upon owners the expense of damage done to the roads by the erection of the hoardings which they are bound to put up when building. An ambiguous section enables certain streets and places to be specified in which small traders' stalls may be set up with the sanction of the Commissioners. The intention seems to have been to make street-trading unlawful everywhere else: but the section does not say so, and although it enables byelaws to be made, we know that a byelaw for the management of traffic does not extend to its prohibition (*Toronto* v. *Virgo*, 1896, A.C. 88). The duty of notifying infectious diseases is now cast upon everybody in the house, and on everybody "in the company of" the invalid; and the date of the "onset" of the disease, with many particulars, is to be given, which a casual companion could not know.

Police (Ord. 13).—This is mainly consolidative. Piano-playing (except in the country) is forbidden after 11 p.m.

Pilgrim Brokers (Ord. 17).—This term includes (1) "any person who is concerned in bringing into the Colony any pilgrim"—but not shipowners or captains (nothing is said about the crew); (2) persons who buy and sell, or take reward for purchasing tickets for pilgrims; (3) persons who offer to supply them board or lodging; (4) persons who for reward "advise or influence . . . any pilgrim on any matter relating to his pilgrimage," or attempt to do so. Such persons must be licensed, with a bond of $500 or more; and must (if supplying board or lodging) exhibit a sign. Pilgrims (*i.e.* Mohammedans going to the Hedjaz) must go in a "pilgrim-ship" unless they are first-class passengers, and other shipmasters are liable to a month's imprisonment if they take them. Pilgrim brokers who infringe the terms of this licence, or by false statements delay a pilgrim, or divert him from his ship, may have as much as two years' imprisonment.

Opium (Ord. 20).—This is, as usual, a fertile subject of legislation. The present Act goes far beyond consolidation, but it would serve no useful purpose to analyse it minutely. All policemen are made opium revenue officers: examination of passengers at ports of entry without warrant is instituted, and powers of expelling aliens who infringe the opium laws are given.

Prisons (Ord. 28).—By an Act of 1872 prisoners not sentenced to hard labour are not compellable to work. By the present Statute they are.

Colonial Stock (Ord. 25).—This consolidates the law and provides for the issue of debentures (at not more than 5 per cent.).

Malacca Lands (Ord. 30).—The very curious and interesting tenure known as "Malacca Land" (see Journal vii., p. 432) is the subject of legislation amending the Act of 1886. Such land can only be transferred to (1) a Malay domiciled in Malacca; (2) a person certified by the Malacca authorities as qualified under customary law. But this does not extend to transfer by act of law, or by way of mortgage.

It is provided that an aggrieved mortgagee may appeal to the Governor, who may order that the mortgaged land shall be excluded from the operation of the Ordinance.

Miscellaneous.—Ord. 10 provides for the *Licensing of Auctioneers* ($1,000 fine—fishermen exempted). Ord. 21 amends it. The *Widows, etc. Pension Fund* enactment is amended by two Acts (4 and 14). Other enactments relate to *Volunteers*, *Pilgrim Ships*, *Registration of Corporate Deeds*, *Excise*, and *Appropriation*.

4. FEDERATED MALAY STATES.

[*Contributed by* T. Baty, Esq., D.C.L.]

The legislation of these microscopic countries now proceeds so uniformly that it will be sufficient to give some account of its general character, noticing any special departures from it.

The Acts during 1906 have been few. Uncertainty in law may be tolerated in a Western community which has grown up with it. It is intolerable in an Eastern civilisation, in which it is an alien intruder. And uncertainty is inevitable when Statutes are multiplied. The effect in England, much more in Perak, is to make the ordinary population the slaves of the officials. For they never can tell what the exact powers of the latter may be.

The Malay Governments have candidly recognised that the real effect of much of their legislation—as of modern legislation in general—is to hand over the law-making power to administrative bodies. They boldly print the statutory Rules among the Statutes: an arrangement of great merit from the point of view of convenience. If, however, it were necessary to analyse all Statutory Rules, the scope of this review would be immensely increased, whilst their comparative want of permanence would render the work of little value. It is not proposed, therefore, to refer to them in what follows, except in unusual circumstances.

The Statutes refer to *Pensions*, *Savings Banks*, *Government Officers' Guarantee Fund*, "*Chandu*" *Shops*, *Registration of Title*, *Sanitary Boards*, *Morphine*, *Volunteers*, *Liquor aud Opium Revenues*, *Land*, *Succession*, *Gaming*, *Civil Procedure*, *and Medical Registration.*

The Morphine Acts follow the Straits Act of 1903. A Resident's Rule imposed in Perak 2½ per cent. *ad valorem* export duty on cultivated rubber. The Gaming Acts were required for N. Sembilan and Selangor only; the Medical Registration Acts by all but Pêrak, while Selangor required an *Electric Supply* Act, Pahang passed a *Workmen's Hospitals* Act, and also passed an Act carrying out what has long been accomplished in the other and less backward States—the absolute abolition of the interesting institution of *Debt-slavery* or *menjiring*. This is an institution which has many affinities with the Roman *nexum*, and it appears to have been mainly obnoxious to British susceptibilities on account of its name. Had it been styled "indentured debtorship" it might have survived, as the debtors were, on the whole, well treated and regarded as friends by their masters. The present writer treated the subject at length in the *Law Magazine and Review*, May and August 1901, to which readers may possibly care to refer.

In Pahang and N. Sembilan the Acts of 1897 relating to *Succession to*

Land were repealed without a substitute; and these two countries passed no Volunteer Act.

The British Order in Council accepting appeals from the Courts of these so-called "foreign" States (May 11, 1906) may be mentioned here. According to old conceptions of suzerainty and protection, the fact that appeals lay from the Courts of a half-sovereign power went far to prove that its vassalage approximated to subjection. (*See* C. Stubbs, *Law Magazine and Review*, 1882, p. 294).

5. MAURITIUS.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—23.

Supply (Nos. 1, 2).

Orphans' and Widows' Pension Fund (No. 3).—An actuarial investigation into the working of this Fund having been deemed expedient, this Ordinance is to furnish the necessary funds for the purpose.

Public Officers.—No. 4 makes some amendments in the administration of the Public Officers' Guarantee Fund.

Curatelle (No. 5).—Curators of small shares of immovable property are empowered to sell such shares by notarial contract with authority of the Procureur-Général.

Standard Times (No. 6).—The mean solar time of longitude 60 degrees east of Greenwich is declared the standard time for Mauritius and its dependencies, except the Chagos Archipelago, for which the standard time is to be 75 degrees east of Greenwich. The time mentioned in any regulations, bye-laws, or instruments for doing anything is to be interpreted as the standard time unless otherwise specifically stated.

Native Emigrants (No. 7).—"Emigrant" in this Ordinance means a person who, being a native of the Colony, is engaged to take part in any exhibition or in any theatrical, musical, or spectacular performance at any place beyond the limits of the Colony. In such a case the engagement must be in writing, executed in duplicate, and attested by an official, and its effect must be explained by such official to the parties.

One copy of the contract is to be stamped and lodged with the Collector of Customs. Any employer shipping "emigrants" must further obtain a pass and enter into a bond to "recover" the emigrant.

No one may ship more than four natives for service as domestic servants beyond the limits of the Island without the sanction of the Collector of Customs.

Fees for Oaths of Officer (No. 8).—No fees are henceforth to be taken from public functionaries taking the oaths of office.

Petitions of Right (No. 9).—By this Ordinance the time-honoured right

to petition the Sovereign is accorded to His Majesty's subjects, whether by birth or naturalisation, residing or domiciled in Mauritius or its dependencies, and all such petitions to the Sovereign are to be absolutely privileged, provided that the petition, if published and defamatory, may be the subject of proceedings, civil or criminal, against the petitioner.

Children (No. 10).—Juvenile offenders are to be divided in reformatories into two classes—a first or non-penal class and a penal class: and the two sets are to be kept apart from one another. This is in harmony with the now widely extended policy of keeping children from the contamination of prison life and hardened associates.

English Scholarship Examinations (Nos. 11, 13).—The first of these empowers the Governor to award scholarships of £250 each for four years to two "laureates" of the Royal College to pursue their studies in the United Kingdom or elsewhere. The second extends the time for candidates to enter.

Supply of Water.—No. 12 increases the powers of District Boards for obtaining a supply of water to towns, villages, and public buildings.

Election Law.—No. 13 provides for substituted service on a voter objected to who cannot be found.

Quarantine (No. 15).—When from stress of weather the health officer cannot board an arriving vessel and the master satisfies the pilot that there is no contagious or infectious disease on board, the pilot may bring the vessel to moorings in the harbour at a safe distance; but anybody communicating with the vessel, until quarantined, is liable to a fine of 500 rupees.

Election Law.—No. 16 enlarges the time for giving notices in the case of municipal elections.

Hawkers (No. 17).—Hawkers of flowers, fresh fruit, and vegetables, and sugar canes, may carry on their trade in any thoroughfare which is 100 metres outside a municipal market in the eastern or western suburbs of the town.

Stamps.—No. 18 exempts from stamp duty receipts given by Government or municipal officers in the execution of their office.

Supply (No. 19).

Health.—No. 20 organises the medical staff in the various districts.

Dentists (No. 21).—No person is to practise as a dentist unless duly qualified, and registered persons wishing to practise must submit their degree or diploma to the Director of Public Health or, in certain cases, an affidavit in lieu of it. A register of dentists is to be kept at the registry of the Supreme Court. No dentist is to practise general anæsthesia without the assistance of a legally qualified medical practitioner.

Pilots.—No. 22 provides for the appointment, permanent or temporary, of pilots by the Governor. Pilots are to give a security bond for careful pilotage and may, if guilty of negligence, intemperance, or other misconduct, be fined a month's pay by the harbour master,

Lunacy (No. 23).—This is the most important Ordinance of the year. It amends and consolidates the law relating to the care and treatment of lunatics.

No patient is to be received into any lunatic asylum in the Colony unless by an order under the hand of the magistrate for the district from which the patient is removed. If the Procureur-Général or the Chief of Police has reason to believe any person to be of unsound mind, he is to signify his opinion to the magistrate of the district where the person resides, and the magistrate is then to refer the matter to the Board of Lunacy Commissioners of the district, who inquire and give a certificate. The magistrate then makes his order for detention. There is a Central Lunacy Board, which has jurisdiction over the District Boards and "visits" asylums.

IV. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by* HERMAN COHEN, ESQ.]

The Parliament of the Commonwealth has been chiefly engaged this year in voting supplies and revising tariffs; but it has found time to pass some important measures dealing with meteorology, designs, land acquisition, the referendum and, above all, the preservation of Australian industries.

Meteorology (No. 3).—This Act empowers the Governor-General to establish observatories for the purposes of meteorological observations and to appoint a Commonwealth Meteorologist, and this officer is to be charged with the following duties:

(*a*) The taking and recording of meteorological observations;
(*b*) The forecasting of weather;
(*c*) The issue of storm warnings;
(*d*) The display of weather and flood signals;
(*e*) The display of frost and cold-wave signals;
(*f*) The distribution of meteorological information;
(*g*) Such other duties as are prescribed to give effect to the provisions of the Act.

Arrangements may be made by the Governor-General with the States Government for the transfer to the Commonwealth of State observatories, the recording of meteorological observations by State officers, and the interchange of meteorological information.

Copyright in Industrial Designs (No. 4).—The State Designs Acts of

each State are in future, by this Act, to be administered by the Commonwealth. A Central Designs Office is established, with a seal and a sub-officer in each State, and a Registrar of Designs is appointed.

Any new and original design which has not been published in Australia may be registered under the Act. The applicant for registration must pay a fee and must furnish the Registrar with the prescribed number of drawings, photographs, tracings, exact representations or specimens of the design. The author of a design is to be the first owner, and is to be the person entitled to make application for registration. Where the design is made on behalf of any person for valuable consideration, he is to be deemed the author of the design. If the Registrar registers the design he is to issue a certificate to the applicant. If the Registrar refuses registration, the applicant may appeal to the Law Officer. The owner of a registered design must, within two years after registration, substantially use the design in Australia, otherwise his copyright ceases.

Damages for infringement are not to be awarded unless the Court is satisfied that the infringer infringed knowingly or after notice of the subsistence of copyright.

Power is given to the Supreme Court to order rectification of the register. The Act concludes by providing for an international arrangement. "If the King is pleased to apply to the Commonwealth any law of the United Kingdom for carrying into effect any arrangement made with the Government of any foreign State for the mutual protection of designs, then any person who has applied for protection for any design in the United Kingdom, or the Isle of Man, or in any foreign State with which the arrangement has been made, shall be entitled to registration of his design under this Act in priority to any other applicant, and such registration shall have the same date as the date of the original application in the United Kingdom, or the Isle of Man, or such foreign State as the case may be. . . (s. 48).

"If it is made to appear to the Governor-General that any British Possession has made satisfactory provision for the protection in that Possession of designs registered in the Commonwealth, the Governor-General may by Order apply all or any of the provisions of the last preceding section, with such variations or additions (if any) as to him seem fit, to designs registered in that British Possession" s. 49).

Preservation of Australian Industries (No. 9).—The chief mischiefs at which this Act is aimed are (1) Monopolies, (2) Dumping. With regard to the former the Act provides as follows:

S. 4 (1). Any person who, either as principal or as agent, makes or enters into any contract, or is or continues to be a member of, or engages in any combination in relation to trade or commerce with any other county or among the States:

(*a*) with intent to restrain trade or commerce, to the detriment of the public; or

(*b*) with intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers, is guilty of an offence. Penalty, five hundred pounds;

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

S. 5 (1). Any foreign Corporation or trading or financial Corporation formed within the Commonwealth, which, either as principal or agent, makes or enters into any contract or engages or continues in any combination:

(*a*) with intent to restrain trade or commerce within the Commonwealth, to the detriment of the public; or

(*b*) with intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers, is guilty of an offence. Penalty, five hundred pounds.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

S. 6 then goes on to define what is "unfair competition."

(1) Unfair competition means competition which is unfair in the circumstances, and in the following cases the competition shall be deemed to be unfair unless the contrary is proved:

(*a*) If the defendant is a commercial trust;

(*b*) If the competition would probably, or does in fact, result in an inadequate remuneration for labour in the Australian industry;

(*c*) If the competition would probably, or does in fact, result in creating substantial disorganisation in Australian industry or throwing workers out of employment;

(*d*) If the defendant with respect to any goods or services which are the subject of the competition gives, offers, or promises to any person any rebate, refund, discount, or reward upon condition that that person deals, or in consideration of that person having dealt, with the defendant, to the exclusion of other persons dealing in similar goods or services.

(2) In determining whether the competition is unfair, regard shall be had to the management, the processes, the plant, and the machinery employed or adopted in the Australian industry affected by the competition being reasonably efficient, effective, and up to date.

By s. 7 "any person who monopolises or attempts to monopolise, or combines or conspires with any other person to monopolise any part of the trade or commerce with other countries or among the States with intent to control, to the detriment of the public, the supply or price of

any service, merchandise, or commodity is guilty of an offence. Penalty, five hundred pounds."

There is a similar provision in s. 8 directed against foreign Corporations. The Attorney-General may institute proceedings to restrain by injunction the carrying out of any contract which is in restraint of trade or injurious by reason of unfair competition. Any person injured in his person or property by anything done in contravention of this part of the Act may recover treble damage for the injury.

No criminal proceeding is to be instituted except by the Attorney-General or some person authorised by him.

The second part of the Act deals with the prevention of "dumping." Competition for this purpose "is to be deemed unfair, unless the contrary is proved, if:

(*a*) Under ordinary circumstances of trade it (the importation) would probably lead to the Australian goods being no longer produced, or being withdrawn from the market, or being sold at a loss, unless produced at an inadequate remuneration for labour; or

(*b*) The means adopted by the person importing or selling the imported goods are, in the opinion of the Comptroller-General or a Justice, as the case may be, unfair in the circumstances; or,

(*c*) The competition would probably, or does in fact, result in an inadequate remuneration for labour in the Australian industry; or,

(*d*) The competition would probably, or does in fact, result in creating any substantial disorganisation in Australian industry or throwing workers out of employment;

(*e*) The imported goods have been purchased abroad by or for the importer, from the manufacturer or some person acting for or in combination with him, or accounting to him at prices greatly below their ordinary cost of production, where produced or market price where purchased; or,

(*f*) The imported goods are imported by or for the manufacturer or some person acting for or in combination with him, or accounting to him, and are being sold in Australia at a price which is less than gives the person importing or selling them a fair profit upon their fair foreign market value, or their fair selling value if sold in the country of production, together with all charges after shipment from the place where the goods are exported directly to Australia, including Customs duty."

On receipt of a complaint of "dumping," the Comptroller-General of Customs is to certify the Minister, who may thereupon refer to a Justice of the High Court the investigation and determination of the question whether the imported goods are being imported with the alleged intent. Pending the determination of this question the importation of the goods is to be suspended. If the Justice finds that the goods are being imported

with the intent alleged, his decision is to have the effect of a Proclamation under the Customs Act, prohibiting the importation of the goods either absolutely or subject to conditions.

Referendum (No. 11).—By "referendum" in this Act is meant the submission to the electors of a proposed law for the alteration of the Constitution. Whenever a law for this purpose is proposed, the Governor-General may issue a writ having attached to it a copy of the proposed law, setting out (*a*) the text of it and (*b*) the text of the provisions proposed to be altered. This writ is to be advertised by the Commonwealth Electoral Officer by advertisement in newspapers, and by exhibiting copies of the writ at Post Offices and Custom Houses. The polling is to be by ballot, and is to be taken on the day fixed by the writ. Each elector is to have one vote only.

Special provisions are made as to voting and the scrutiny of votes. The result is to be certified to the Governor-General by the chief electoral officer, stating the number of votes given for and against the proposal, and the number of ballot papers rejected as informal.

Elections (No. 12).—This is an Act to remove doubts as to the electoral divisions of the State of New South Wales by validating a proclamation fixing such divisions.

Land Acquisition (No. 13).—Under this Act the Commonwealth may acquire any land by agreement with the owner, or by compulsory process. In the latter case the Governor-General may direct that the land be acquired, and thereupon, by notification in the *Gazette*, declare that the land has been acquired for the public purpose therein expressed, and the notification having been laid before both Houses of Parliament, the land is to become vested in the Commonwealth, free from all trusts, charges, and easements. The value of the land for purposes of compensation is to be assessed without reference to any increase in value arising from the proposal to carry out the public purpose. In this connection it may be noted that "public purpose" is not to include land to be acquired for the seat of the Commonwealth Government. Damage by severance is to be taken into consideration and also enhancement or depreciation of adjoining land of the owner.

If the Minister and the claimant cannot agree to the amount of it, the compensation is to be determined by an action for compensation by the claimant, or by a proceeding by the Minister in a Federal or State Court.

In case of mortgages on land compulsorily acquired, the mortgagee may join with the mortgagor in making a claim or making an independent claim. S. 52 defines the principles on which compensation to a mortgagee is to be assessed.

Limited owners, tenant for life, guardian, committee of lunatic, executor, etc., may sell and convey. In such case the purchase-money may be paid to a trustee.

Customs.—No. 14 alters the duties on a number of scheduled articles.

No. 7 confers a preference on certain goods the produce or manufacture of the British Colonies or Protectorates in South Africa which are included within the South African Customs Union.

Excise.—No. 15 amends the Excise Tariff Act, 1905, in regard to cane sugar.

No. 16 alters the excise duties as to a number of articles—mostly agricultural implements.

No. 20 alters the excise duty on spirits.

Patents (No. 19).—This empowers the Commissioner of Patents, or the Law Officer, on appeal from the Commissioner, to extend the time for doing any act or taking any step, or to revive an application for a patent. Applications for patents lapsed by an error or omission of an officer of the Patent Office may also be revived.

Spirits (No. 21).—This Act in the interpretation clause defines very fully the meaning of such terms as "Pure Australian Standard Brandy," "Australian Blended Brandy," "Australian Standard Rum," etc., and goes on to declare that in relation to trade and commerce with other countries and among the States, no person shall describe spirits by those names unless they conform to the definition. No person is to describe as brandy any spirit not distilled wholly from grape wine. The penalty is £50. No imported spirits (other than gin, Geneva, Hollands, schnapps or liqueurs) are to be delivered from the control of the Customs for human consumption, unless the collector is satisfied that the spirits have been matured by storage in wood for a period of not less than two years.

There are precise provisions as to the methylating of spirits.

Any officer of Customs may at any time enter a shop or warehouse and take samples.

Pacific Island Labourers (No. 22).—The Minister is empowered to grant a certificate to any Pacific Island labourer exempting him—by reason of age, infirmity, or marriage with a non-Pacific Island native—from the provisions of the Pacific Island Labourers Act, 1901.

Supply (Nos. 1, 6, 7, 23).

2. NEW SOUTH WALES.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—64: Public, 35; Local, 29.

Supply (Nos. 1, 3, 11, 38, 39).

Dower (No. 4).—No widow is to be, nor after the commencement of the Probate Act of 1890 to be deemed to have been, entitled to dower out of any land or out of any estate or interest in the same.

Government Stock (No. 5).—Holders of Inscribed Stock, debentures, and

Treasury Bills of the New South Wales Government redeemable in London may have them transferred from the London to a Sydney register.

Incorporation of Amendments (No. 6).—This is an improvement in "the mechanics" of law-making well worthy of attention and imitation. Henceforth when an Act is amended by the insertion, substitution, or repeal of any words or figures, the Act is to be printed as amended in the form certified by the Attorney-General as correct. There is to be a marginal note referring to the amending enactment.

Railways (No. 7).—The present Railway Commission is dissolved and a body corporate, with perpetual succession and a common seal, constituted in its place, with the title of Chief Commissioners of Railways and Tramways.

Public Works.—No. 9 establishes a Public Works Fund and a Closer Settlement Fund.

Education (No. 12).—Henceforth education in primary and superior public Schools is to be free. All fees are abolished.

Gaming and Betting (No. 13).—Every owner or occupier of any place who knowingly allows it to be used as a common gaming house, or for playing unlawful games, is liable to a penalty of £100.

Any owner of land or building who has reasonable grounds to suspect that it is being used for gaming or betting, may serve the occupier with a notice to quit, which is to determine the tenancy unless the occupier proves his innocence.

A Judge of the Supreme Court may, on affidavit of a police inspector showing reasonable grounds for suspecting a place to be used for gaming, declare it a common gaming-house: subject to the right of the owner or occupier, on proving no contravention of the Act, to have the declaration rescinded.

Notice of the declaration, when not rescinded, is to be published, and any person after such publication seen frequenting the premises may be arrested: the police may also enter and seize any instruments of gaming.

Street betting is made punishable with a fine of from £20 to £100, and betting or wagering on any sports-grounds other than a licensed racecourse is also prohibited. Betting with infants or sending them circulars is punishable with a fine of £100.

No race meetings are to be held except on licensed racecourses—such licences to be issued by the Colonial Secretary on payment of a fee, on such terms as may be prescribed by the Governor.

Administration of Estates (No. 14).—The Judges are authorised to delegate certain duties in connection with the probate and the administration of estates to the Registrar of the Court.

When an infant is entitled to a share of an intestate's estate, and such share does not exceed £500, the Court may sanction the whole being spent on the infant's maintenance, advancement, or education. An executor's right of retainer is abolished. The Court is also given power to authorise or to carry on administrative or intestates' business.

Public Holidays (No. 15).—Seven days' notice of these is to be given by proclamation in the *Gazette*.

Pastures Protection (No. 20).—This is further legislation to abate the rabbit pest. A board of inspectors is constituted for each district, and every owner or occupier is to be rated towards rabbit wire-fencing. An owner or occupier who has made a boundary rabbit-proof at his own expense is entitled to contribution from adjoining owners.

Companies, *Alteration of Memorandum* (No. 22).—This Act is in four parts. By Part II companies are given the same power of enlarging their Memoranda of Association, with the sanction of the Court, as is given by the English companies (Alteration of Memorandum Act, 1890).

Foreign Companies.—Part III deals with foreign companies—that is, companies incorporated in any other country, colony, or State than New South Wales, and carrying on business in New South Wales. These are, before commencing business, required to register:

(*a*) The name of the company and a copy of its memorandum and articles.

(*b*) A balance sheet showing assets and liabilities.

(*c*) The name and address of the person appointed to carry on the business, to be called the public officer of the company.

(*d*) The situation of the principal office.

The public officer of the company is to be answerable for all the requirements of the Act being complied with.

A foreign company must also file annually a list of debentures or other securities charged on its property and of its stockholders.

Compromises.—Part IV provides for compromises by companies. If a majority of creditors representing three-fourths in value accept such compromise, it is to be binding on the rest, subject to the approval of the Court.

Judges' Pensions (No. 27).—Judges of the Supreme Court retiring after fifteen years' service are to be entitled to pension at the rate of one half the salary. For earlier retirement, from disability or infirmity, there is a scale according to the length of service. The pension service for District Court Judges is twenty years.

Police Pensions (No. 28).—This provides for superannuation allowances and gratuities to members of the police force.

Early Closing (No. 29).—Hairdressers' shops are allowed to remain open till seven o'clock, when other non-scheduled shops close at six o'clock.

Secondhand Dealers (No. 30).—Any person carrying on business as a secondhand dealer (other than a shareholder) without being licensed, is liable to a penalty of £10. The words "licensed dealer in old wares" must be painted on a conspicuous part of the premises. All purchases and sales must be entered in a book and goods suspected to be stolen produced to the police.

Collectors of old wares (which have a very wide definition in the Act) must also have a licence and are subjected to strict regulations.

Friendly Societies (No. 31).—These must all register themselves under the Principal Act (F.S.A. 1899). Disputes may be referred to the Registrar. There are a number of minor amendments.

Fruit Pests (No. 37).—This is a further attempt to deal with vine and vegetation diseases. Inspectors may enter any land or building and search for fruit pests, and plants and packages likely to convey them, and report to the Minister, who may take measures for their treatment or destruction.

Certificates of nurseries for plants being free from disease may be given, after inspection, by the Minister.

Municipalities (No. 40).—This is an important Act of ss. 105, divided into ten parts. Part I is preliminary. Part II deals with the Constitution of Municipalities; Part III with endowment; Part IV with the Powers and Duties of Counsels; Part V with the Constitution and Election of Councils; Part VI with Valuations and Rates; Part VII with Funds, Accounts, and Audit; Part VIII with Loans; Part IX with Ordinances and Regulations. Twenty-eight matters are set out as to which regulations may be made: *inter alia*, polls, voting, hoardings, gas and electric light, places of public amusement, disorderly houses, sales of fish and milk, public nuisances, abattoirs, public buildings and parks, etc.

Sydney is exempted from the Act.

Parliamentary Elections (No. 41).—This Act, of 61 sections, deals with the making of lists and rolls, additions and alternations, nomination and election, the re-election of Ministers, and allowances to members.

Fire (No. 45).—The object of the Act is to prevent carelessness in the use of fire. Whoever ignites or uses, or carries, when ignited, any inflammable material within one hundred yards of any stacks of corn hay, or standing crops in an inflammable condition, or within ten yards of any growing crops, stubble field or grass land in an inflammable condition, or within twenty-five yards of felled timber, is liable, if the property is endangered, injured, or destroyed, to a penalty of £50, or imprisonment for three months.

Regulations may be prescribed for the mixing of phosphorus baits for poisoning rabbits, and the burning of fire-breaks on railway lands.

The sale of matches other than those made to strike only on the box may be prohibited.

Savings Banks (No. 48).—This is an Act of 85 sections, constituting and regulating the management of the Government Savings Banks. Loans may be made, on security, for improvement of land and discharge of incumbrances.

Mining (No. 49).—This is a consolidating Act, dealing with miners' rights and business licences, leases of Crown lands, mining on private lands, dredging leases, tenements and leases generally, warden's courts

and appeals. Power is given to the Governor to make regulations on some thirty-five specified matters affecting mining and miners.

Local Government (No. 56).—This is also a consolidating Act of 209 sections, dealing with the local government of municipalities and shires. Power is reserved to the Governor to make Ordinances on some seventy matters.

Water (No. 59).—The object of this Act is to make better provision for water conservation, water supply, irrigation, drainage, and the control of flood waters. Channels and embankments may be constructed. Artesian wells are not to be sunk without a licence. If water is being wasted or improperly used the Minister may direct precautions to be taken to stop such waste.

3. QUEENSLAND.

[*Contributed by* W. F. CRAIES, ESQ.]

Acts passed—35.

In the annual volume of the Queensland Statutes the Acts of 1906 (6 Ed. VII.) are not printed in their numerical order, but are arranged alphabetically under their appropriate titles, on the plan of Chitty's Statutes. Several Acts which in the United Kingdom would be treated as local and personal, or private, are numbered consecutively with the general Acts; but are separately classified in the annual volume.

Supply.—Nos. 1, 4, 17, 18 are Appropriation Acts.

Income Tax.—6 Ed. VII. No. 11 amends the Income Tax Acts of 1902[1] and 1904.[2]

S. 2 establishes the calendar year as the year of assessment.

S. 4 abolishes the exemption of incomes not exceeding £100 given in 1904, and the fixed duties on earned incomes not exceeding £150, and he graduated duty on incomes between £150 and £500. Instead thereof, it imposes a duty at 6*d.* on annual incomes up to £500, leaving the graduation of 1904 on incomes over £500. The duty on incomes derived from the produce of property is fixed at 1*s.* in the £. By s. 4 (iii.) exemption is given to persons, not being companies or absentees, whose total income from whatever source does not amount to £160.

S. 6 makes all money received as or by way of royalty taxable as part of the income derived by the recipient from the produce of property.[3]

S. 7 amends s. 32 of the Act of 1902, as amended by s. 13 of the Act of 1904, and deals with the taxation of persons absent from the State. The amendments seem intended to widen the definition of taxable incomes

[1] 2 Ed. VII. No. 10: Journal, N.S. pt. xii. 1903, p. 361.
[2] 4 Ed. VII. No. 9: Journal, N.S. pt. xv. 1906, p. 111.
[3] *Cf.* The Imperial Act, 7 Ed. VII. c. 13, s. 25.

accruing from a business in Queensland, so as to include certain cases in which the contracts relating to it are made elsewhere.

S. 9 imposes on the personal representatives of a person dying before the date prescribed for making returns, the obligation of making the returns, and imposes the tax on the estate of the deceased as if he had lived to be taxed.

S. 3 defines "dividend" as all sums of money paid, allocated, distributed, or credited by a company to or amongst its shareholders as such, by whatever name called.

"The term does not include (*a*) refundment on creation of capital where such refundment is only made in respect of call-money on shares actually paid by the shareholders; or (*b*) such portion of liquidation dividends as does not exceed the amount of call-money or shares actually paid by the shareholders."

Succession Duty.—No. 13 exempts from probate duty and succession duty property which, under any past or future disposition, becomes subject to a trust for a charitable or educational institution in Queensland, or for such other institution as the Governor in Council may from time to time by order determine.

Reduction of Debt.—No. 9, which amends the Audit Act, 1895,[1] directs that the money standing to the credit of the National Debt Redemption Fund shall be applied in discharging Treasury bills issued and sold in aid of the State Revenue, in redeeming and cancelling unsold Treasury bills authorised to be issued, or in the purchase and redemption, at the current market price, of Queensland Government Debentures or Inscribed Stock issued under Loan Acts, and in paying the commission, costs, and expenses incurred in effecting such purchase.

Animals.—No. 5 creates a close time for native bears and opossums (ss. 2, 3, 4,), and prohibits the use of poison for destroying opossums (s. 6). This Act also prohibits the wilful killing or injuring at any time of the wombat, tree kangaroo, flying squirrel, platypus, and echidna. All the animals except the opossum are further identified by their scientific names. The penalties of the Act do not extend to black-fellows killing the animals for their own food, to killing for *bonâ fide* protection of orchards or crops, nor to authorised collectors of specimens for museums, or scientific institutions, or for scientific investigation (s. 9).

Bank Holidays.—No. 12 amends the Bank Holiday Act of 1904:[2]

(*a*) By substituting notifications by the Home Secretary for proclamations by the Governor in Council;

(*b*) By striking out May 24, the birthday of Queen Victoria (Empire Day);

(*c*) By giving the Home Secretary power to alter the day appointed for a bank holiday by a notification, which may be limited in operation both as to time and place (s. 3).

[1] 59 Vict. No. 13, s. 6: Journal, O.S. [2] Journal, N.S. vol. vii. p. 116.

Explosives.—6 Ed. VII. No. 21 is the first legislation passed in the State to deal with the manufacture, storage, and examination of explosives.

No explosive may be made except in a licensed factory, or kept except in such factory or in a public magazine appointed, or a private magazine licensed, under the Act, or in places subject to the control of the Customs or approved under some other Statute.

The Secretary for Mines may direct the destruction, reconditioning, or other disposal of explosives which he considers dangerous to the public safety, and large powers are given to the Governor in Council (subject to the disapproval of either House) to regulate or prohibit importation, packing, carriage, and sale, and generally to provide for the interests of public safety.

Easement of Light.—6 Ed. VII. No. 3 declares that from and after March 1 1907, no right to the access or use of light for any building shall be deemed to exist or be capable of coming into existence by reason only of the enjoyment of such access for any period or of any presumption of lost grant based upon such enjoyment. It is a transcript of the New South Wales Act of 1904, No. 16.[1]

Executors and Trustees.— 6 Ed. VII. No. 34 amends the Trustees and Executors Acts of 1897 (61 Vict. No. 10);[2] 1898 (62 Vict. No. 8),[3] and 1902 (2 Ed. VII. No. 7).[4] The amendments are adapted from legislation of S. Australia, W. Australia, and New Zealand, and extend the powers of investment (s. 2), give powers of delegation by power of attorney to trustees residing out of Queensland (ss. 4, 5), and make provision as to payments out of the trust banking account (s. 6).

Intestacy.—6 Ed. VII. No. 24 directs the distribution of the estate, both real and personal, of a married woman who dies intestate, between her husband and her children and next-of-kin in the same manner as the real and personal estate of a married man who dies intestate.

Land.—By 6 Ed. VII. No. 16 the proceeds of all future sales by auction of land under Part VI. of the Land Act, 1897,[5] are to be paid in to the Loan Fund Account and applied in defraying the cost of works directed by Parliament to be executed out of money standing to the credit of that account.

Two Acts, one general the other special, deal with the acquisition of land for closer settlement.

The subject has already been dealt with by a series of Acts from 1894 to 1901, which are repealed and re-enacted with modifications, in the Act of 1906, 6 Ed. VII. No. 32, which forms a kind of code on the subject.

Power is given to the State to acquire, by agreement or compulsorily, private land in Queensland for closer settlement. This is termed resumption; and the land so acquired reverts to the position of unalienated Crown

[1] See Journal, N.S. 1906, p. 105.
[2] Journal, N.S. 1899, p. 105.
[3] Journal, O.S. N.S. 1899, p. 481.
[4] Journal, N.S. 1903, vol. iv. p. 365.
[5] 61 Vict. No. 25: Journal, N.S. vol. i. p. 105.

land (s. 4). The land is paid for in cash or by debentures issued under the Act.

Before acquiring the land, inspection and report and valuation are to be made by a member of the Land Court (ss. 8, 9). The price, on acquiring by agreement, may not exceed by 10 per cent. the valuation of the Land Court.

The compulsory powers cannot be exercised unless the land exceeds £20,000 in value, exclusive of improvements, the legislation being framed with the idea of breaking up large pastoral areas for the purposes of agricultural settlement.

The procedure for compulsory taking is prescribed, and the assessment of compensation is made by the Land Appeal Court, finally and without appeal, on a basis including the value of the land, as at the date of the requisition for the land, including improvements, and buildings and any loss of business or stock (cattle, etc.) consequent on the resumption (s. 20).

The land acquired is disposed of as follows:

(1) By setting apart as much as seems necessary for roads, public reserves, or townships;

(2) By proclaiming the rest as open for selection as agricultural farms under the Land Act, 1897;[1]

(3) If the land so proclaimed has not been selected as above, after the offer has been open for at least twelve months, by offering it for unconditional selection.

The minimum aggregate purchase-price is fixed by adding 10 per cent. to the price paid in cash or debentures (s. 29).

Where improvements on land are sold, with or without the land, on special terms, the amount is deducted from the purchase-price as above fixed (s. 34).

On selection the selector obtains a lease for twenty-five years, subject to certain conditions as to fencing and improvements (ss. 32, 35).

The selector pays, under the name of rent, annual sums in accordance with a scheduled scale representing instalments on the purchase-money without rent. He may, after five years, acquire the fee simple (s. 33).

6 Ed. VII. No. 26 confirms agreements for the purchase of certain lands for closer settlement.

Lands Clauses.—6 Ed. VII. No. 14 deals with the resumption of land for public works.

These works are fully and alphabetically enumerated, and range from abattoirs to wharves. They do not include railways nor the resumption of lands for closer settlement, but the Railways Acts are amended so as to fit in with the scheme of the new Act.

The Act produces the effect of the Imperial Land Clauses Acts, but is framed on the model of the New Zealand Act of 1894, No. 42, with clauses taken from the Commonwealth Act of 1901.

[1] 61 Vict. No. 25: Journal, O.S. 1898.

Master and Servant.—6 Ed. VII. No. 31 amends the Shearers' and Sugar Workers' Accommodation Act of 1905[1] by adding provisions for temporary accommodation for sugar workers, to be provided by the owners of sugar plantations or contractors for doing sugar work thereon, and as to temporary accommodation for sheep shearers in certain cases.

6 Ed. VII. No. 30. The Contractors' and Workmen's Lien Act of 1905 applies not only to ordinary contracts, but also to the Crown, the Railway Commissioner, and the Education Minister, and to all bodies undertaking performance of work for a public purpose.

The scheme of the Act is to give contractors and workmen who have done work on land or buildings, or made permanent improvements thereon, a lien on the interest of the employer in the land for the contract price or wages (s. 1).

A workman's lien is on the land on which the work is done, but he may also get a charge on the money payable to the contractor who employs him (ss. 4, 6). It is limited to the amount payable by the employer or a contractor, not exceeding thirty days' earnings (s. 4 (ii. iv)).

The contractor's lien is on the interest of his employer on the land for the amount for the time being due to him from the employer (s. 4 (i)).

Neither to contractor nor workman is the employer, except in case of fraud, liable in excess of the contract price (s. 4. (iii)).

Provision is made for giving notice of claims of lien on land, or charges on contract monies, on receipt whereof the person notified becomes a stakeholder pending enforcement of the lien, in accordance with the prescribed procedure in a Small Debt Court, or District Court, or the Supreme Court (ss. 12-26).

Liens are not enforceable against the land unless registered (s. 27). When registered they are postponed to prior registered mortgages on the land, unless the mortgagee is a party or has assented in writing to the contract out of which the lien has arisen. In the latter case the mortgagee, on paying out the lien, can add the amount to his security (s. 7).

As between contractors and workmen, the workman's liens and charges take priority (s. 8).

Mines.—6 Ed. VII. No. 10 authorises the Mines Department to make advances to persons or companies, for the purpose of providing machinery and plant for mining and treating metalliferous ores.

The advances are not to be made except on a report from the Government geologist that the mining operations in connection with which the plant is to be used are likely to be remunerative, and that the plant is properly adapted to the operations.

The advances are to be made in instalments, pound for pound, against money contributed by the borrower after the agreement to lend towards the machinery and plant. The debt is to be secured by mortgages or charges,

[1] 5 Ed. VII. No. 9: Journal, N.S. vol. vii. p. 440.

but is recoverable only out of the property charged and not against the borrower personally (s. 8).

Parks and Public Lands.—A Crown grant was made in 1895 to trustees of land in S. Brisbane, for use as a reserve for cricket and athletic sports. The Act No. 33 contemplates the transfer of the ground to the S. Brisbane Municipal Council upon the trusts of the deed of grant: and gives the trustees powers of leasing part of the ground, for any purpose except an hotel or for horse or pony-racing, and to mortgage the ground within a prescribed limit to discharge existing liabilities. The leases and mortgages are subject to the approval of the Governor in Council.

Ports and Harbours.—No. 23 (local) increases the borrowing powers of the Rockhampton Harbour Board from £150,000 to £230,000.[1]

No. 29 (local) increases the power of the S. Brisbane municipality to raise £50,000 by debentures for wharfage purposes, and makes the new debentures repayable in thirty years from the date of issue.

6 Ed. VII. No. 7 empowers the Governor in Council to make regulations, varying, as to harbours which have no Harbour Board, the statutory scale of harbour dues in force.[2]

6 Ed. VII. No. 25 amends the Harbour Boards Acts, 1892,[3] by giving powers to the Harbour Board to protect water frontages from erosion by requiring the owners of lands not vested in the Crown which have immediate frontage on a tidal water, and are so situate as to be liable to erosion by the action of water to execute the necessary protective works. The work is done by the owner, or, if he fails, by the Board, in either case at his expense, and in the latter case the cost is a first charge on the land. The owner can discharge himself from his liability under the Statute by surrendering the land to the Crown free of incumbrances, or by surrendering the water frontage with a depth of two chains immediately behind it.

Railways.—No. 15 is intended to make better provision for the profitable working of State Railways to be constructed after Nov. 29, 1906. It repeals the Railways Guarantee Act of 1895[4] and provides for the definition of a betterment area, *i.e.* a district which will be directly benefited by the construction of a proposed railway. The district is defined by the Railway Commissioner, but its creation may be vetoed by a two-thirds majority of a ballot of the ratepayers of the district (s. 4). On the creation of a district the ratepayers are liable to make good to the State any deficiency in the earnings of the line, if they do not cover the cost of working and interest at 3 per cent. on the cost of construction (s. 6). The sum is raised by a railway rate, to which the State Treasurer contributes out of the Consolidated Revenue as statutory occupier of vacant lands in the district (s. 157).

[1] There are two prior Acts as to this harbour: 59 Vict. No. 23, & 61 Vict. No. 20.

[2] Under 57 Vict. No. 19 as amended by 5 Ed. VII. No 32: Journal, N.S. vol. vii. p. 437.

[3] 56 Vict. No. 26.

[4] 59 Vict. No. 17.

Where the total earnings of three successive years show a surplus, the railway ceases to be under the Act (s. 16).

The effect of the Act will be to check the ardour of electors to force their M.P. to get unremunerative State lines built for their benefit.

The principles of the Act are extended by 6 Ed. VII. No. 23 to a State line already constructed between Dalby and Bell.

6 Ed. VII. No. 2 validates an agreement for the construction of a railway by private enterprise from Chillagoe to the Etherdge goldfield. The agreement made with the Commissioner of Railways involves certain forms of State aid to the enterprise, but in no way restricts the State from constructing competing lines. The line when completed may be worked by the Commissioner of Railways. The Act contains the clauses now usual in Australia restricting the classes of labourers to be employed (s. 7), and prescribing the rate of wages (s. 8). Land occupied by or used in connection with the railway is not rateable (s. 14).

Schools of Arts.—A series of three Acts give power to the trustees of certain schools of arts held under trusts created by State grants of land to raise by mortgage specified sums for improvements, or to sell the land and buy a new site for the school.

Reformatories and Industrial Schools.—6 Ed. VII. No. 6 creates a new definition of neglected children to be dealt with under the Industrial and Reformatory Schools Act of 1866.[1] The classes of children included in the new definition are (1) children under seventeen, (2) children under fifteen, (3) children under ten. The Act applies to children under seventeen who habitually beg or wander about without settled abodes, or who are destitute and without sufficient means of subsistence, and whose relatives are drunkards, or dead, or undiscoverable, or who reside in reputed brothels, or with women known to the police to be of bad character, or who, if girls, solicit men, or behave indecently, or habitually wander or loiter without reasonable cause, in a public place, or who, having been convicted of offences punishable by imprisonment, or a less punishment, should, in the opinion of the Court, go to an industrial school.

The Act also extends to children under fifteen associated with persons convicted of vagrancy, or thrice of drunkenness, or reputed thieves, and to children under ten who between certain hours sell matches, newspapers, etc., in public places, or elsewhere than at the child's home.

Parents may also have children under seventeen sent to such schools on reasonable grounds, and on giving security for maintenance. Under the former law infant convicts could be assigned by order of the Court to persons willing to take charge of them. This procedure is abolished.

State Forests, etc.—6 Ed. VII. No. 20 provides for the reservation by Proclamation of the Governor in Council of Crown lands as State forests, or national parks (s. 1), and for the making of regulations by the Governor

[1] 29 Vict. No. 8.

in Council for their management and control, and as to the conditions under which timber or forest products may be cut, removed, etc. (s. 6). The regulations must be laid before Parliament. The Proclamation prevents alienation of the lands except under statutory authority: but does not affect mining laws nor prevent the grant of certain classes of leases and occupation licences. The lessees or licensees may not cut trees unless nor except as expressly authorised by the terms of the lease or licence (s. 5).

Water Supply.—No. 8 modifies the Water Authorities Act of 1891,[1] as to the mining district of Charters Towers by making special provisions as to the constitution and election of the local Water Board.

Weights and Measures.—No. 19 consolidates and amends the law relating to weights and measures, repealing a series of earlier statutes of N. S. W. and Queensland.[2] Certain of the new provisions are adapted from the Imperial Act of 1835 (5 and 6 Wm. IV. c. 63).

The Act establishes the standard weights and measures for the State (s. 9), and provides for making and stamping copies (s. 10) and replacing lost or damaged standards (s. 11).

Incidentally it fixes the weight of a stone at 14 standard avoirdupois lb., excluding the 8 lb. butcher's stone, and establishes for bran, pollard, and flour a ton of 2,000 lb. avoirdupois (s. 12), and fixes separate bushel standard weights for maize, barley, oats, etc., and forbids the sale by measure of certain cereals and seeds (s. 15). Elaborate provision is made for inspection by State and local inspectors, for checking and marking weights, and for dealing with defective and false weights by prosecution and confiscation. It does not appear whether the Crown is bound by the penal sections; but regulations may be made for periodically verifying weighing instruments in use by Government Departments (s. 32 (vi)).

A special clause adapted from that in the repealed Act of 1898 requires the provision of weighing machines at places for the treatment, purchase, or sale of agricultural or dairy produce, and the establishment of a check-weigher at such places, in the interests of sellers to, or buyers from, the owner, etc., of the place where such produce is dealt with (s. 22).

4. TASMANIA.

[*Contributed by* W. M. Graham-Harrison, Esq.]

Acts passed—Public, 47; Local and Private, 15.

Supply and Appropriation (Nos. 1, 24, and 41).

Salaries of Ministers (No. 4).—This Act provides for the reduction during the year ending June 30, 1907, of the salaries of certain ministers and officers of the Executive Council and Parliament. (See also No. 38.)

[1] 55 Vict. No. 11.

[2] *Cf.* 1852 (16 Vict. No. 34, N.S.W.), 1866; 30 Vict. No. 18, and 1898, 62 Vict. No. 18. Journal, N.S. 1899, p. 483.

Juries' Separation (No. 5).—This Act reproduces exactly the imperial Juries' Separation Act, 1897.

Opium-smoking Prohibition (No. 6).—This Act prohibits absolutely the smoking of opium, and the sale, preparation, or possession of opium in any form suitable for smoking.

Opium in any other form may not be kept without a permit from the Chief Secretary of Tasmania.

Power is given to issue search warrants, and a penalty of not less than £10 or more than £200, with or without imprisonment for not less than one month or more than twelve months, is provided.

Young Persons' and Women's Detention (No. 7).—Under this Act provision is made for the detention in some institution, instead of in gaol, of young persons under eighteen and women awaiting trial, and of children and youthful offenders who have been dealt with under the Youthful Offenders, Destitute and Neglected Children's Act, 1896.

Amendments Incorporation (No. 9).—This Act provides that where formal amendments to any Act are made by any other Act, the amended Act shall thereafter be printed as amended. (*Cf.* the provision in 48 & 49 Vict. c. 8 as respects amendments to the imperial Army Act.)

Railway Passengers' Actions (No. 10).—Actions for injuries brought against the General Manager of Railways are to be stayed till the plaintiff has delivered a statement setting forth certain scheduled particulars. After delivery of particulars the defendant may offer a settlement ; but if the action eventually goes to trial, the jury must not be informed of the amount of the offer.

Interpretation (No. 12).—In the main this is an enactment of the same provisions as those contained in the imperial Interpretation Act of 1889. It contains, however, certain interesting additional matter : *e.g.* s. 6 provides that marginal notes are not, but that a schedule is, to be deemed part of an Act, that the law is to be considered as always speaking (a useful reminder to draftsmen and interpreters of Acts, *cf.* Ilbert, *Legislative Methods and Forms*, p. 248), and that the Crown is not bound by an Act unless expressly mentioned ; s. 25 lays down rules for the reckoning of time (*cf.* the form in *op. cit.* p. 330) ; s. 30 contains a useful provision for saving rules on the repeal of the Act under which they were made, which will enable the Tasmanian draftsman to dispense with such a provision as the proviso to s. 98 (1) of the Patents and Designs Act, 1907 ; and s. 43 provides that an attempt to commit a statutory offence under future Acts is to be punishable as if the offence had been committed.

Registration of Teachers and Schools (No. 15).—This Act provides for the appointment of a Registration Board, which is to have the duty of forming a register of teachers and schools. Failure to register a school exposes the proprietor or head teacher to a penalty, and a teacher if not registered will be unable to sue for services rendered as teacher. The

regulations to be made by the Registration Board may (*inter alia*) regulate the admission of teachers from other countries.

The Act does not apply to State schools or schools aided by the State.

Life Assurance Companies' Amendment.—No. 16 provides for the issue of a special policy in case of the loss or destruction of an existing instrument of insurance.

Distribution of Intestates' Property (No. 17).—Under this Act surviving wives and husbands are put in exactly the same position in the case of an intestacy.

All the property (real and personal) in respect of which a person dies intestate will be distributed as follows:—If no children, but husband or wife, all to husband or wife; if children, as well as husband or wife, two-thirds to them, one-third to husband or wife; and except where the intestacy is partial only, a widower or widow gets, in addition to his or her share, £1,000, or where the net value of the estate does not exceed that sum, the whole of the estate.

A male infant not under nineteen, and a female infant not under eighteen, can, if married, make a valid will.

Marriage Amendment (No. 19).—This Act provides that defects of various kinds are not to avoid a marriage, *e.g.* the fact that it is celebrated by or before a person who is not a minister of religion or a duly appointed registrar of marriages, if either of the parties was unaware of the defect.

Secret Commissions Prohibition (No. 21).—This Act is aimed at the same evil as the imperial Prevention of Corruption Act, 1907, and appears to follow the same lines as existing Acts of Victoria and West Australia; the offences, however, created by the Act are wider and more numerous than those under the imperial Act, and the Act includes provisions penalising the gift, receipt, offer, or solicitation of secret commissions in return for advice, and secret commissions to trustees in return for substituted appointments.

Among miscellaneous provisions the following may be noted: witnesses who give incriminating answers may get a certificate protecting them from criminal proceedings; trade custom is not to be any defence to a charge under the Act; and the burden of proof that a gift was not a secret commission is on the defendant.

Companies (No. 25).—The object of this Act is to remove doubts as to the power of a company to reduce paid-up capital (*cf.* 40 & 41 Vict. c. 26).

It also exempts company debentures from the operation of the Bills of Sale Act.

Bills of Exchange Amendment (No. 29).—This Act (which is only temporary, expiring on December 31, 1907) protects a bank which in good faith and without negligence pays a cheque of which the amount has been fraudulently altered, if the cheque has been drawn with such gross negligence

as to offer facility for the alteration. This provision is to be printed on, or attached to, every cheque-book issued after the passing of the Act.

The Act does *not* attempt any definition of "gross negligence."

Local Government.—No. 31 consolidates and amends the law relating to local government.

Closer Settlement.—No. 33 provides for the acquisition and disposal of land for closer settlement.

Inscription of Stock (Nos. 39, 40).—Under these Acts borrowing to the amount of £676,343 is authorised.

Constitution Amendment (No. 47).—For the purpose of election for the House of Assembly, Tasmania is to be divided into five electoral divisions, corresponding with those into which it is divided for the purpose of elections for the Commonwealth House of Representatives; and the members of the House of Assembly are reduced from thirty-five to thirty.

The franchise is given to all subjects of the King, male or female, who have lived in Tasmania for six months continuously and are on the electoral roll of any Assembly district; persons are only disqualified if of unsound mind, in receipt of aid from public charitable institutions, or under, or liable to, sentence for any offence punishable anywhere in the King's dominions with at least one year's imprisonment.

5. VICTORIA.

[*Contributed by* C. J. Zichy-Woinarski *and* W. Harrison Moore, Esqrs.]

Constitution (No. 2075).—This Act repeals the separate representation of public and railway servants of the State provided for in the Act of 1903, and these officers now resume their place in their appropriate electoral districts. It is enacted, however, that "in order that they may be enabled to render efficient and loyal service to the State," no officer may take any part whatsoever in Parliamentary relations or in the politics of the State, otherwise than by recording a vote; and no person or class of persons so employed may use or attempt to use any influence in respect to any matter affecting the remuneration or position in the public service of himself or any other person under various penalties culminating in dismissal.

Public Meetings (No. 2047).—An Act "for the prevention of disorderly conduct at public meetings." Disturbers of public meetings, including persons using there any threatening, abusive, or insulting words, are liable on conviction to a penalty not exceeding £5, or imprisonment for one month. The chairman may direct the removal of any such disturber, and any police constable who is present shall execute his order.

Small Improved Holdings (No. 2053).—The purpose of this important Act is declared in its preamble: "Whereas it is desirable to assist deserving persons to acquire small improved holdings in rural districts and as close as possible to centres of population where industrial employment may

be obtained by them, to enable them to provide homes for their families and profitably use their time when out of employment, and also to add to the wage-earning portion of the community and increase the number of producers and quicken thereby the development of our natural resources." The Act enables the Government to acquire land for allotments valued at not more than £200 each, and to expend thereon in building and improving and for necessary materials, implements, and stock, not more than £150 (ss. 7, 8). A "probationary tenant" may then be admitted to permissive occupancy on showing that he is prepared by himself or with the aid of his family to cultivate and work the land; that he is unable by his own means to acquire land suitable to his requirements; that he has not during the preceding three years been convicted of habitual drunkenness, larceny, or any indictable offence; and on condition that he will transfer to the Minister any property of which he is possessed, to be sold and applied at the discretion of the Minister towards the advances made to the tenant under this Act (s. 10).

The probationer may be employed on his holding under the direction of a competent foreman appointed by the Government and may be paid a wage for his services not exceeding 20*s.* a week during the first six months, 15*s.* during the second six months, and 10*s.* during the third six months, subject to a deduction of 5 per cent. on the value of the holding and of the amount advanced thereon (s. 11). If a tenant disregards the instructions of the foreman or the provisions of the Act, the foreman is to report to the Minister. The foreman's duties are (*a*) to instruct probationary tenants (1) as to what produce they ought to cultivate and (2) how to cultivate; (*b*) to supervise their work and see that it is properly carried out; and (*c*) to recommend to the Minister what materials, implements, or livestock should be supplied to probationary tenants and to assist in selecting the same (s. 16). At the end of six or eighteen months, a conditional purchase lease may be granted to the probationer, whereby the tenant amongst other things covenants to repay the value of the land and the money expended thereon in sixty-three half-yearly instalments at the most, the amount spent on buildings and fences in thirty-two half-yearly instalments, and the amount spent on implements and livestock in six half-yearly instalments, in each case with interest at 5 per cent. (s. 18).

Amongst the other conditions are residence, non-alienation within six years, and non-division in case of death; and no allotment may be held by any person who is the holder of other land of the value of £150, or who holds any other grant under this Act. The land is liable to forfeiture in case of failure to pay instalments due thereon, and the property in all materials, etc., is deemed to remain in the Crown until the advances in respect thereof are repaid. There is also a condition affirming the right to resume the land for public purposes on payment of the actual cost of removing and re-erecting any improvements with any consequent depreciation, the amount of loss sustained in consequence of the relinquishment of improvements not re-

movable, and the portion of principal repaid; but no compensation shall be payable for severance or for any person's interest in the lease (s. 19 [15]). By s. 29 no licence or club certificate for the sale of intoxicating liquor shall be granted within the boundaries of any allotment. The funds for the purposes of the Act are provided for by a power to raise £450,000 over a period of three years and by all repayments which are made on account of the Act, to be called "The Small Holdings Fund."

Closer Settlement (No. 2067).—The most striking provision of this Act is one designed to assist immigrants. It provides that the Government may allot lands to be taken up on conditional purchase lease solely by applicants in or from Great Britain or Ireland or any other country, and applications for such land may be lodged with the Agent-General in London or other person whom the Government may appoint. The person appointed may on receiving the prescribed payment issue a permit entitling the applicant to enter into immediate occupation of the land. Other provisions of the Act allow the Closer Settlement Board to erect dwelling-houses and other buildings on the lands acquired by them and to charge the cost of the same upon the lessee's interest in the land.

Fruit Cases (No. 2059).—This Act has the double object of regulating the character and size of fruit cases for export of fruit and of requiring that old cases shall not be used for this purpose.

Lotteries, Gaming and Betting (No. 2055).—The four divisions of this Act deal respectively with lotteries, gaming, street betting, and restrictions on race meetings, and their general character is to strengthen the existing law by increasing the power of the executive, facilitating the proof of offences, and dealing with the subsidiary or auxiliary acts connected with the several substantive offences. In connection with lotteries, the advertising in whatever form of lotteries or printing of lottery tickets, or selling newspapers containing an advertisement of a lottery to be held in Australia, or forwarding packets or parcels to lottery promoters, is made an offence; and in proceedings against lottery promoters "it shall in default of other evidence be sufficient to support the information to show" that the alleged lottery ticket was bought or accepted in the belief that it gave a right to the holder to have an interest in the lottery (s. 9). In respect to gaming, the word "place" in the Police Offences Act is defined to mean "any place whatsoever whether within a building or not, whether upon land or water, whether defined as to area or not, and whether private property or otherwise." Any place used principally for betting or gaming, or settling betting and gaming debts (including clubs of this nature), is a "common gaming house," but the mere fact of persons betting on a racecourse is not to make it or any part of it a common gaming house (ss. 15 and 16).

The Act also prohibits the publication of advertisements (including tipsters' advertisements) in newspapers relating to betting or horse-races, or any notification as to betting odds or as to totalisators or any unlawful

game (ss. 21 and 22). Any house where a totalisator is used is a common gaming house, and all acts incidental to totalisator betting—acting as agent, dealing in tickets, etc.—are made offences. Stringent provisions are made as to "common gaming houses." Any person using or any owner, etc., suffering the use of premises for a common gaming house (which includes any place in which unlawful games are carried on) is guilty of an offence; an owner may evict any tenant so using premises; and every person found in such place without lawful excuse is liable to a fine of £5. Ss. 38.46 provide for the "quarantining" of such houses and of any place allowed to be used as a means of access or exit, on the order of a Supreme Court judge made on the affidavit of any officer of police not below the rank of sub-inspector; and thereupon all persons found therein, or entering or leaving, may be arrested without warrant and brought before a court of petty sessions. No business of any kind may be carried on in the place while the order remains in force.

Premises adjoining a gaming house used by permission for access or exit may be entered by the police "whether by breaking open doors or otherwise," on special warrant.

In regard to street-betting, the police may arrest any person so engaged without warrant; minimum terms of imprisonment are imposed for various offences established by the Street Betting Suppression Act, 1896.

The fourth division of the Act provides that all racecourses shall be licensed and the licence shall define the number of meetings that may be held thereon, the maximum in any year not to exceed sixteen days in the neighbourhood of Melbourne, or twelve days elsewhere for horse races, and for pony races sixteen days (or, if there are more than three courses, the quotient of 48 divided by the number of such courses) about Melbourne, and four days elsewhere.

The fee for licences is payable to the Government and is fixed at 3 per cent. on the gross revenue in all cases where that revenue exceeds £1,500, 2 per cent. between £600 and £1,500; below £600, no percentage but only a licence fee of £1. The number of licences for racecourses within forty miles of Melbourne, or within twenty miles of Ballarat or Bendigo, is not to exceed the number of racecourses in use within the twelve months next preceding August 1, 1906.

In a great many cases, the Act declares what shall be *primâ facie* or sufficient evidence and throws upon the defendant the burden of rebutting it. Offences under the Act, unless it is specifically otherwise provided, are subject for a first offence to a fine of not less than £5 and not exceeding £100, or to imprisonment for not less than seven days or more than three months; and for a second offence to a fine of not less than £25 or more than £200, or imprisonment for not less than one month or more than six months; while for subsequent offences the offender must be imprisoned for not less than three or more than twelve months.

The Widows' and Young Children's Maintenance Act (No. 2074).—This Act empowers the Supreme Court to grant maintenance out of a man's estate for his widow and young children whenever he has by his will so disposed of his estate as to leave his widow and young children without sufficient means for their support. Male children over eighteen years of age, or female children over twenty years of age or married, are not within the benefits of the Act (s. 2).

The application to the Court is by summons which has to be served on the executor of the will of the deceased person, and the application must be made within six months of the date of the grant of probate (ss. 3, 4, 11).

The Court at the hearing of the summons may examine the widow and other witnesses, and may require from the executors full particulars of the deceased person's estate, and in fixing the amount of any provision it may make, the Court must have regard to the net value only of the estate in question and also to any independent means of support possessed by the widow and children (ss. 6, 7). No provision for a widow may exceed the sum of £1,000 per annum, or be more than the income or interest on such portion of the estate of the deceased as the widow would have been entitled to upon the intestacy of the deceased (s. 9 [2]).

Any application may be refused by the Court if it be of opinion that the character or conduct of the applicant disentitles him or her to the benefit of the Act, or on the other hand conditions or restrictions may be imposed by the Court in any grant it may make (s. 8).

The burden of any grant the Court may make is borne by the testator's beneficiaries in proportion to the values of their respective interests, and the grant itself is to operate as if it had been a codicil to his will executed by the testator.

Marriage (No. 2062).—By this Act decrees *nisi* for divorce became absolute by entry by the Prothonotary without application from the petitioner, unless the petitioner directs otherwise, in which case the decree is discharged. Provision is made for notice to the respondent, and for search at the Prothonotary's office and for the issue of certificates that the decree has been made absolute or discharged.

Children's Court (No. 2058).—This Act provides that children under the age of seventeen years charged with any offence against law or with being "neglected children"—the latter the measure taken to make a child a ward of the State—shall not be brought before a court of petty sessions but before a Children's Court. These Courts are composed of such magistrates as the Governor in Council may determine. They sit apart from the ordinary court of petty sessions, and their proceedings are not in public. They have the ordinary power of a court of petty sessions, but in addition they may release children on probation, or order it to pay damages, or adjudge it to be a neglected child. Probation officers are attached to every court, and it is their duty to investigate the circumstances of any

charge against a child, to inform the Court generally as to the child's conduct and mode of living (s. 9), and generally to supervise the conduct of any child committed to their care by the Court, and in this last capacity the officer has the powers of a peace officer and may bring the child before the Court for any misconduct (s. 10). There are important provisions intended to secure the responsibility of parents, who may be ordered to pay damages and costs wherever their neglect has contributed to the child's misconduct as well as to enter into recognisances for the future good behaviour of the child (ss. 21, 22). The provisions of the Neglected Children's Act, 1890, are extended to children under the age of sixteen living in a brothel or associating with a prostitute, whether the mother of the child or not. In the case of boys under the age of sixteen years the Court may discharge the accused upon being satisfied that the parent has carried out an undertaking to inflict privately a "whipping with a cane or birch rod" (s. 25). Careful provision is made that childen awaiting trial shall not be detained in prison, and if this is unavoidable they must be kept apart from all other prisoners (s. 18). Finally, the Children's Court is to be "guided by the real justice of the case without regard to legal forms and ceremonies."

Juvenile Smoking Prevention (No. 2028).—This Act makes it unlawful to supply tobacco or any smoking materials to children under the age of sixteen years. In the case of tobacconists, a third conviction will lead to the loss of his licence for a period of five years.

Lifts Regulation (No. 2048).—This Act requires owners, lessees, and occupiers to give notice of any lift in use in a building to the Chief Inspector of Factories. These lifts and all lifts hereafter constructed are from time to time to be inspected, and the inspector may order them to be closed, altered, or repaired as appears necessary to ensure their safety, subject to an appeal to the Inspector-General of Public Works; and the Governor in Council may make regulations generally concerning the construction, inspection, and working of lifts. No lift shall be worked or taken charge of by any person under the age of eighteen years.

The Unclaimed Moneys Act (No. 2051).—In both New Zealand and South Australia a legal obligation has for many years been put upon public companies and banks in whose hands are unclaimed moneys to give publicity to information relating to such moneys and to pay them over to a superior guardian—the State itself—which safeguards the moneys, invests them and receives the interest from their investment until the moneys are either claimed by their owners or revert to the Consolidated Revenue.

The above Act is based upon a like principle, and it is an Act far more comprehensive than any existing Victorian law. In Victoria since 1898, bankers have been required to furnish annually a list to the Curator of Intestate Estates of the current accounts opened since 1894 and not operated upon for a period of five years, and also of moneys deposited since 1894 and which are at least five years overdue and unpaid.

Similarly all Victorian trustee and executor companies have been required to pay the Receiver of Revenue all unclaimed moneys which are in their hands unclaimed for a period of five years after the same became payable; and these moneys the State Treasurer invests, and for six years thereafter claimants may apply to the Supreme Court for payment. Similarly under the insolvency law all unclaimed dividends in insolvent estates are required to be paid by trustees and assignees in insolvency into the Government Treasury to a fund called the "Insolvency Unclaimed Dividend Fund." None of these provisions are affected by the new Act (s. 11). All bankers, all trading companies, building societies, and friendly societies are within the new measure and equally bound in respect to unclaimed moneys in their hands. The Act limits such moneys to moneys "which shall have become legally payable to the owner since January 1900, and not before, or which shall at any time after that date become payable to him, but the recovery whereof has been or may be barred by operation of law" (s. 2).

A register of such moneys has to be kept in a certain form, and is to be open for public inspection and to be made up annually, and a copy of such register has to be advertised annually in the *Government Gazette*. If for one year after such advertisement the money remains unclaimed, it is then required to be paid over to a Receiver of Revenue to a fund called the "Unclaimed Moneys Fund" (ss. 4-6).

Any lawful claimant of the fund may thereafter make claim to the money, and if he satisfies the Treasurer that he is owner of it, the Treasurer may direct payment to be made to him out of such fund (s. 9), and the Treasurer is not to be held responsible if after making such payment some other claimant makes claim for the same money; but the latter claimant is to have recourse to the first claimant (s. 10).

The Vacant Unclaimed Lands Act (No. 2056).—A preamble to this Act sets forth its *raison d'être*: "Whereas there are in the possession and under the control of the Crown certain undelivered Crown grants under the general law, sealed and dated before the commencement of the Real Property Act of 1862, No. 140, on which the fee chargeable on delivery has not been paid; also certain grants of title from the Crown prepared for registration more than thirty years ago on which the fee for registration and the contribution to the Assurance Fund chargeable under the said Real Property Act and the Transfer of Land Act of 1866, No. 301, respectively, have not been paid, and they remain unregistered and incompleted titles: And whereas the persons named as grantees have not nor has any one on their behalf made any claim to the Crown in respect of the said grants: And whereas land comprised in many of such grants is vacant, unimproved and unproductive, and it is expedient in the interest of the public that it should not continue so." The Act then deals with such lands, authorising the Crown to sell them after

due notice has been given in the *Government Gazette* (s. 3). The proceeds of the sale are devoted, in the first instance, to paying the costs, charges, and expenses of the sale, and in the second place to paying any municipal, water, or other rates with which the land is chargeable, and the balance then remaining is to be paid into the Trust Funds to an account in the names of the Minister of Lands and of the original grantee of the land (s. 4).

The original grantee of the land, or any person claiming through him, may at any time within three years thereafter petition the Supreme Court for an order to have such balance in such account paid to him as sufficient proof of title, and the Court may make such order, but at the end of three years from the time of sale, if no such claim is made, the moneys become the property of the Crown, and are then paid into the Treasury out of such account (ss. 5, 6).

Provision is made, too, for any claim being set up to the land prior to the date of the advertised sale, and machinery is provided whereby such claimant may upon satisfactory proof obtain delivery of the Crown grant or registration of the grant as the case may be (ss. 7-9). The Governor in Council is authorised to make regulations for the carrying out of the provisions of the Act, and a schedule of fees is also provided.

Licensing [1] (No. 2068).—The main features of the Licensing Act, 1906, are the extensions of many of the provisions for the regulation of licensed premises to clubs, and the introduction of a new tribunal and procedure for closing licensed houses. Generally, with regard to clubs, the powers of entry and inspection given to the police, and regulation of the supply of liquor in licensed premises, are made applicable; but the Licensing Court is empowered to exempt any registered club formed before the date of the Act from the operation of these sections. This in fact has been done in the case of all reputable clubs, which have applied for exemptions.

The other new feature is contained in Division III., which repeals the local option sections of the principal Act of 1890. A body known as "the Licences Reduction Board" composed of three members is appointed, the chief duty of which is to close licensed premises in every district where the statutory numbers—fixed by the principal Act on the basis of the number of ratepayers—are exceeded. A fund called the "Compensation Fund" has been created, consisting of an amount of 3 per cent. paid annually by every licensee, and contributed to the extent of two-thirds by the owner, upon the amount of liquor purchased by him during the year. From this fund, contributed wholly by owners and licensees, compensation is to be paid to the owner and licensee of every licensed premises which the Board determines shall be closed. The Board is directed to reduce the number of licensed houses in each year to such an extent as the moneys to the credit of the Compensation Fund will be sufficient to admit of

[1] Contributed by W. Lewers, Esq.

compensation being paid. It is required to make a maximum valuation of the compensation payable to owner and licensee on certain specified principles. In deciding what licensed premises shall be closed, houses in respect of which convictions for certain offences against the Licensing Acts have been recorded are to be dealt with first, subject to the dominating consideration of the convenience of the public and requirements of the locality. The existence of the Board will terminate in 1916, after which date there will be complete local option.

The new provisions as to clubs and local option are taken almost verbatim from the New South Wales Act, 1905, No. 40. The remaining provisions of the Act consist of additions to the principal Act as to the conditions of holding the various licences, and as to police control. Many amendments and alterations were introduced during the passage of the Bill; and these, as well as the complicated nature of some of the provisions, such as those relating to compensation, to which reference has been made, render the Act anything but a model of lucidity.

6. SOUTH AUSTRALIA.[1]

[*Contributed by* A. BUCHANAN, ESQ.]

Acts passed—General, 11; Reserved, 1; Private, nil.

Public Debt, *Surplus Revenue.*—Act No. 911 of 1906 provides that the whole of the surplus (if any) of the general revenue of the State shall be set apart at the end of each financial year (June 30) to form and constitute a Sinking Fund to be applied in the payment of maturing Government securities or in the purchase of Government securities.

Railways and Tramways, *Ticket Scalping.*—Act No. 912 of 1906 is principally directed against "ticket scalping" in connection with the Government railways. It makes the alteration or improper use of or trafficking in railway tickets or passes an offence punishable by fine or imprisonment (s. 3), imposes penalties for travelling without payment of fare (s. 4), for obtaining concession tickets by means of untrue representations (s. 5), for transferring (s. 6) or the use by other than the person to whom issued of such tickets (s. 7).

Municipal Tramways Trust Act.—No. 913 of 1906 is an elaborate measure to ratify an agreement entered into between the Government and the whole of the existing horse-tramway companies in Adelaide and the suburbs for the purchase of their respective undertakings at an agreed price, and to constitute a Municipal Tramways Trust, in which the undertakings when purchased are to vest, and by which the lines are to be electrified. Part III. constitutes the Trust (s. 9), which is to consist of eight members, two of

[1] The legislation of the year 1906, being that of the last session of the 18th Parliament and of the first session of the 19th Parliament, is here reviewed.

whom are to be appointed by the Governor, two by the Corporation of the City of Adelaide, two by the Corporations of the suburban Municipalities, and two by the suburban District Councils (s. 10), of whom one-half are to retire every three years (s. 16). The Governor appoints one of the members to be Chairman (s. 23), who is to receive £250 per annum. Each other member is to be paid £1 per meeting, but not more than £78 in any year (s. 24). The Trust is incorporated (s. 25).

Part IV. provides that the Trust may carry on the existing horse-trams pending electrification.

Part V. provides that the main lines shall be electrified within three years (s. 33), but that certain specified extensions shall not be electrified until the receipts of the Trust are sufficient to cover working expenses, interest, and prescribed payments to a Sinking Fund (s. 34), and the Trust is given an exclusive right within a ten-mile radius to work electric trams (s. 35).

Part VI. provides that the costs of purchase and of electrification are to be paid in the first instance by the Government, which is authorised to raise the amount required by the issue of Inscribed Stock or Treasury Bills bearing interest not exceeding 4 per cent. (s. 36). For the costs of construction as incurred, the Trust is to issue debentures in favour of the Treasurer for the repayment of the amount advanced by sixty half-yearly instalments, with interest at the same rate as paid by the Government (s. 38). The costs of purchase are charged on the assets of the Trust with simple interest, and are to be paid within thirty years (s. 40). Half yearly the Trust, after providing for current expenses and maintenance, is to pay over the rest of its receipts to the Treasurer, who is to apply the same in priority to the interest and sinking fund on the cost of construction, interest on the cost of purchase, in payment of any debentures held by the Treasurer, and lastly towards satisfaction of the cost of purchase (s. 41). When all moneys advanced by the Government shall have been repaid with interest the control of the Government shall cease; the assets of the Trust shall be held for the constituent Municipalities and District Councils, as they may agree, or, in default of agreement, as Parliament shall determine. The Government shall cease to appoint two members of the Trust and the Trust shall appoint its own chairman (s. 45). Without prejudice to the rights of the Treasurer (s. 47), the Trust is empowered to borrow moneys to pay off its liability to the Government, or for any other purposes of the Act (s. 46).

Part VII. apportions the liabilities of the Trust amongst the constituent Municipalities and District Councils, and provides for the adjustment of burdens in the event of alterations of boundaries (ss. 49, 50). The liabilities imposed upon the local bodies by the Act are to be defrayed out of a sufficient special rate to be levied under the Municipal Corporations Act, 1890, or the District Councils Act, 1887, as the case may require (s. 52).

Part VIII. defines the general powers and obligations of the Trust in relation to its undertaking.

Part IX. contains some general provisions, amongst which may be mentioned the limitation of the cost of converting the existing lines to electric traction to £12,000 per mile (s. 69), and the exemption of the Trust and its property from general, special, and local taxation (s. 72).

Part X. imposes penalties for various offences such as interference with the property or working of the Trust (s. 94), travelling without payment of fare, or improper conduct (s. 95), or the carriage of dangerous goods (s. 97).

Part XI. deals with legal procedure.

Land Legislation, *Crown Lands.*—Act No. 909 of 1906 makes a few trifling amendments in the machinery of the Crown Lands Acts.

Reclaimed Swamp Lands.—Act No. 910 of 1906 provides for the management and control by trustees of lands reclaimed by the Government from being swamp lands, and proclaimed to be irrigation areas on the petition of a majority of the occupying lessees (Part II.). The Board for each irrigation area is made a body corporate, and is to consist of five members, of whom one is to be a Government officer, and the other four ratepayers of the area elected by the ratepayers (Part III.), and has powers analogous to those of Local Government bodies under the District Councils Act, 1887, to appoint officers (Part IV.), conduct its meetings and business (Part V.), and to carry out works, levy rates, raise loans (Part VI.). Under Part VII. a "Swamp Lessees' Loan Fund" is constituted out of funds to be voted by Parliament (s. 44), out of which the Commissioner of Crown Lands may make advances to lessees to assist them in making permanent improvements to the capital value of the land (s. 47), the advances being limited to one-half the value of such improvements, and no advance to exceed £75 (s. 49). Part VIII. provides for the making of regulations and by-laws. Upon the abolition, enlargement, or curtailment of an irrigation area, an arbitrator appointed by the Governor is to apportion the property and obligations of the Trust (s. 63 *et seq.*), saving the right of creditors.

Industrial Legislation, *Factories.*—Act No. 915 of 1906 repeals the part of the Factories Amendment Act of 1900 relating to Boards, and substitutes other provisions which are virtually an adoption of the corresponding part of the Victorian Factories Act No. 1975. The Governor may from time to time appoint Boards of not less than four or more than ten members and a chairman to determine the lowest prices or rates to be paid to persons or classes of persons inside or outside a factory by manufacturers of clothing, wearing apparel, or furniture, bakers, butchers, curriers, or brick-makers (s. 61), or by employers in any other trade or business in regard to which resolutions shall have been carried by both Houses of Parliament that it is expedient to appoint such a Board (s. 62); and in fixing such lowest prices the Board is to consider the nature, kind,

and class of work, the mode and manner in which it is done, and the age and sex of the workers, and any other matters which may be prescribed (s. 63). Boards are to be constituted equally of representatives of employers and employés, who themselves must respectively be or have been actual and *bonâ fide* employers or employés in the particular trade, and who are to hold office for three years (s. 7). The names of persons proposed to be appointed members of Boards are to be gazetted (s. 8 (1)), and unless one-fifth of the employers or employés to be represented object to the persons recommended as their representatives, the persons nominated shall be appointed (s. 8 (3)), but if one-fifth do object then the representatives shall be elected under the machinery provided in the third schedule to the Act (s. 8 (4)). The Governor appoints the Chairman of the Board, who is not one of the representative members (s. 12).

In fixing prices or rates in respect of any trade or business not specified in s. 6 the Board is to ascertain as a question of fact the average prices or rates (whether piecework or wages) paid by reputable employers to employés of average capacity (s. 13 *a* and *b*), but where the average prices are not, in the opinion of the Board, sufficient to afford a reasonable limit the Board may so report to the Minister, who is to refer the determination for the consideration of the Court of Industrial Appeals, which may fix the lowest prices or rates irrespective of the average prices or rates (s. 13 *c*).

Where just and expedient, special wages, prices, or rates may be fixed for aged, infirm, or slow workers (s. 13 *d*). The powers of a Board may be exercised by a majority present at any meeting (s. 14). Evidence may be required to be on oath (s. 16). Prices and rates may be fixed at piecework or wages prices and rates or both, provided that for work outside a factory piecework rates and prices only shall be fixed, and at the request of the occupier of the factory a wage price or rate shall be fixed for operating a machine used in such factory (s. 17). In the furniture trade, where practicable, both piecework and wages prices and rates are to be fixed (s. 18).

Where both piecework and wages prices and rates are fixed by a Board the former are to be based on the latter (s. 19). When fixing a lowest wages price or rate a Board is also to fix the maximum hours per week for which such rate shall be payable, and shall fix a higher rate to be paid for hours worked in excess of such maximum (s. 20). The Board, when determining prices and rates, is also to determine the proportion of apprentices and improvers to be employed and fix differential lowest rates of pay for them, having regard to their sex, age, and experience (s. 21). The Board may also fix differential rates of pay for persons under twenty-one other than apprentices or improvers (s. 22).

All apprentices bound for less than three years, unless so bound with the sanction of the Minister, are deemed to be improvers (s. 23). Where an apprentice under 21 has been bound for a term of not less than two years no determination of a Board is to invalidate his indentures (s. 25). Where a

person over 21 has not had full experience in a trade the Minister may license such person to work for a specified time as an improver at the rates fixed by the Board for improvers (s. 26). A Board fixing the lowest wages prices or rates may require the employer to fix piecework prices or rates based on the earnings of an average worker on wages rates under like conditions, and when such piecework rate has been fixed it is made an offence to pay or offer, directly or indirectly, a lower rate, and in any proceedings the onus of proving the sufficiency of the piecework rates is placed on the defendant (s. 28).

Aged, slow, and infirm workers unable to obtain employment at the minimum wage fixed by a Board may be licensed by the Chief Inspector to work for twelve months at a lower specified wage, but the proportion of persons so licensed shall not, except with the consent of the Minister, exceed one-fifth of the number employed in the factory, provided, however, that one licensed slow worker may be employed in any registered factory (s. 29). Any price or rate determined by a Board is to continue in force from a date fixed by the Board, not less than thirty days after such determination, until amended by the Board, subject, however, to amendment or revocation by the Court of Industrial Appeals (s. 30).

Determinations of a Board or of the Industrial Court of Appeals are to be published in the *Gazette* and may be applied to specified local areas by order of the Governor, also to be gazetted (ss. 31 and 35). Determinations of a Board are not to apply to any children of an employer (s. 32). Where a Board has been appointed the Governor, by Order, may extend its scope to trades or businesses of like class and character as those for which it was appointed (s. 34). The Governor is empowered to suspend for not more than six months any determination of a Board, and the Board is thereupon to take evidence and re-consider the matter, and the determination amended or adhered to, as the case may be, is to take effect (s. 35). Notification of determinations of a Board is to be conspicuously exhibited in the factory (s. 40). If a wages rate only is fixed it is not to be lawful to pay piecework rates (s. 42). Employés are not to be paid in goods (s. 43) but in money only, nor can the employer and employé contract for a lower rate than that fixed by the Board (s. 44). Determinations of a Board may be quashed by the Supreme Court for illegality, but are not to be otherwise challengeable (s. 46). Any direct or indirect attempt to employ at lower than the fixed rates, or to employ an undue proportion of improvers, renders liable to a penalty for the first offence of not more than £10, for a second offence of not less than £5 or more than £25, and for a third offence of not less than £50 nor more than £100, and on a third conviction the registration of a factory is to be forthwith cancelled (s. 47).

A Court of Industrial Appeals, to consist of a Judge of the Supreme Court, is constituted (s. 48), with power on appeal to vary or confirm any determination of a Board (s. 49). In fixing rates the Court is to be governed by the considerations laid down in s. 13 of the Act for the

guidance of the Board (s. 50), and if of opinion that the determination under appeal is prejudicial to the progress, maintenance of, or scope of employment in the trade or business, is to make such alterations as will remove that effect and at the same time secure a living wage to the employés affected (s. 51). A majority of the representatives either of employers or employés may appeal against a determination of the Board, as may also the employers of not less than one-fourth of the employés in the trade, or not less than one-fourth of the employés themselves (s. 52 (1)), or the Minister himself without any appeal may refer a determination to the Court for consideration (s. 52 (2)).

Barristers, solicitors, or agents are not to appear before or be heard by the Court except that by direction of the Court, or by consent of the parties, either party may be so represented at its own cost (s. 52 (5)). No evidence relating to any trade secret or to the profits or financial position of any witness or party is to be disclosed or published without the consent of the person concerned (s. 52 (8)). The determination of the Court is to be final and without appeal, but may be reviewed by the Court itself if a *primâ facie* case for review be made out (s. 52 (9)).

On any appeal or reference the Court is to appoint two assessors to advise on any questions relating to the determinations, who may be nominated by the employers' and employés' representatives on the Board respectively, or, in default of nomination, appointed by the Court, and each assessor is to receive one guinea for each day he attends the Court (s. 53).

Females or boys under sixteen are not to be employed more than forty-eight hours in any one week or ten hours in any one day or after nine o'clock at night (s. 56 (1)) unless to meet an unforeseen press of work, when the working hours may be extended to 55 in one week, but so that the overtime shall not exceed one hundred hours in any one year. Notice is given to the Inspector of Factories within twenty-four hours of the commencement of overtime work, with the reasons therefor; a record of overtime is to be kept and displayed in the factory; overtime and tea-money are to be paid daily; there is to be no overtime without the consent of the boy or female employed; if the Minister is not satisfied of the *bonâ fides* of the necessity for overtime he may give notice to the employer, and if not then satisfied may direct the Inspector of Factories to record that the overtime working was not *bonâ fide*, and if such record be made three times within twelve months the employer is to be deprived of the advantages of these overtime provisions (s. 56 (2)). The Governor may suspend the operation of this section for not more than two months generally or as concerns particular factories (s. 56 (4)). Unless allowed by the Chief Inspector of Factories, employés are not to be boarded or lodged by the employer, his wife, or child (s. 57). Regulations may be made to carry into effect the objects of the Act and to prescribe procedure thereunder (s. 59).

Public Health, *Vaccination.*—Act No. 909 of 1906 extends the Act for the abolition of compulsory vaccination, No. 761 of 1901, until the year 1911,

and provides that where calf lymph is used it shall, where practicable, be glycerinated.

Companies' Winding-up.—Act No. 914 of 1906 requires an Official Liquidator to file with the Registrar of Companies once at least in each six months a balance-sheet and statement of his dealings in the winding-up (s. 3). On default for fourteen days any shareholder or creditor of the Company may lodge a complaint in writing of the failure to file or the insufficiency (*sic*) of such balance-sheet and statement with the Registrar (s. 4), who is thereupon to issue an interlocutory summons requiring the Official Liquidator to show cause why he should not be removed (s. 5 *a*). Upon the return of such summons the Supreme Court or a Judge thereof shall (*sic*) remove such Official Liquidator and appoint the Public Trustee to complete the winding-up (s. 5 *b*). The removed liquidator is upon demand to deliver over to the Public Trustee all the property and papers of the liquidating company in his possession or control (s. 6), and refusal or neglect to do so within fourteen days, or such further time as the Court or Judge may allow, is made a misdemeanour, rendering him liable on conviction to imprisonment for a term of three years with hard labour (s. 7). Neither such a conviction nor removal from office is to be any bar to proceedings, civil or criminal, at suit of the Crown or any persons whomsoever (s. 8). The Act is to apply to the winding-up by the Court of a Building Society under the Building Societies Act, 1881.

7. WESTERN AUSTRALIA.

[*Contributed by* HERBERT DU PARCQ, ESQ.]

Acts passed—36.

Stamps (No. 7).—This Act further amends the Stamp Act, 1882, and amends the Stamp Act Amendment Act, 1905.

S. 2 amends the Schedule to the Stamp Act Amendment Act, 1905.

S. 3 amends ss. 2, 3 of the principal Act.

Public Works (No. 8).—An Act to amend the Public Works Act, 1902.

S. 2 (1) For the purpose of constructing any underground work, land under the surface may be acquired under the principal Act without acquiring the surface.

(2) In such case no compensation shall be allowed or awarded except in certain cases, which the Act specifies.

Secondhand Dealers (No. 10).—Persons carrying on the business of purchasing, selling, or exchanging secondhand articles (s. 2) are required to be licensed (ss. 3-6).

Licensees are required;

(1) To keep a register of articles bought, sold, or exchanged;

(2) To produce their licences on demand;

(3) To purchase secondhand goods only between 8 a.m. and 6 p.m. and at no time from persons "apparently under the age of sixteen years" (s. 9), or from any intoxicated person (16);

(4) To keep goods purchased by them for at least four days after purchase in their original form.

Penalties, including in certain cases the cancellation of the licence, are imposed by ss. 11, 12, and 16.

The Act does not apply:

(1) To any person who does not carry on the sale or exchange of secondhand articles at a shop, store, or place of business, nor to any person purchasing such articles for the purpose of manufacturing other articles therefrom, except purchasers of secondhand jewellery (s. 13);

(2) To the purchase or sale by any person of secondhand household furniture, books, mining machinery or appliances (s. 15).

S. 14. When the ownership of any goods which have been unlawfully sold or exchanged is established to the satisfaction of two Justices, they may order the delivering up of these goods to the owner, with or without compensation to the person by whom they were so sold or exchanged, in their discretion.

Bills of Sale (No. 13).—The Act amends the Bills of Sale Act, 1899.

S. 3 (1). Notice of intention to register a Bill of Sale to be given at the office of the Registrar at the Supreme Court.

S. 7. If a caveat is entered against the registration of a bill of sale, such bill of sale shall not be registered until the caveat is removed or withdrawn.

Bread (No. 16).—An Act to amend the Bread Act, 1903.

S. 2. The bread carters' holiday is to be observed.

S. 4. The Act only to apply to the district comprised within a radius of 14 miles from the General Post Office, Perth.

Evidence (No. 28).—This is an Act to consolidate and amend the Statute Law of Evidence, Competency, and Compellability of Witnesses.

S. 6. No person is to be excluded from giving evidence on the ground that he may have an interest in the matter in question, or because he has been previously convicted of any offence.

S. 7 makes parties in civil proceedings, and also the husbands and wives of such parties, competent and compellable to give evidence on behalf of either or any of the parties, subject to the provisions of the Act.

S. 8 allows the defendant, or wife or husband of the defendant, in criminal cases, to give evidence for the defence.

S. 9 (1) Wife or husband is to be a competent and compellable witness for the prosecution or defence in certain criminal cases.

(2) Wife of person charged in certain cases is to be a competent and compellable witness, either for the prosecution or the defence,

at every stage of the proceedings, and without the consent of the person charged.

(3) The same provision is to apply to the husband, of the person charged in certain cases.

(4) Makes a wife, upon the prosecution of her husband on her complaint with respect to her property, a competent and compellable witness for the prosecution or defence, etc.

In the case of a similar prosecution by the wife, the husband to be a competent and compellable witness.

S. 10. Defendants to be competent and compellable as witnesses on the trial of an indictment instituted for the purpose of trying or enforcing a *civil* right only.

S. 11. The judge may tell a person declining to answer a question on the ground that it tends to criminate him, that, if he answers the question satisfactorily, he will be granted a certificate which may be pleaded in bar to prosecution.

S. 15. Persons present at legal proceedings may be compelled to give evidence without a subpœna.

SS. 18, 19. A husband and wife are not to be compelled to disclose communications made by one to the other during marriage, except where husband and wife are parties in divorce and matrimonial causes.

In a proceeding instituted in consequence of adultery, no witness is to be liable to answer questions tending to show that he has been guilty of adultery, unless he has already given evidence in the same proceeding in disproof of his alleged adultery.

SS. 20-23 deal with questions to credit.

SS. 24-32 deal with the protection of witnesses.

S. 25 (1) allows the Court to exercise a discretion as to whether a witness shall or shall not be compelled to answer questions put in cross-examination which are not relevant to the proceeding, except in so far as they affect the credit of the witness by injuring his character.

(2) (*a*) (*b*) (*c*) define the limits within which the Court shall exercise that discretion.

S. 27. This section enacts that any person who prints or publishes any question which the Court, having disallowed as being indecent or scandalous under s. 26 of the Act, has forbidden to be published, shall be liable to punishment for contempt of Court.

S. 35. Two witnesses necessary to support a charge of perjury.

S. 37. A person shall not be convicted of any of the offences against morality mentioned in the Third Schedule to the Act upon the uncorroborated testimony of one witness.

S. 39. On the trial of any person for an offence of such a nature that proof that any place was kept, etc., for gaming purposes, it shall be presumed

that any person found playing at any game in such place was playing for some money, wager, or stake.

S. 40. In Customs prosecutions the onus lies on the defendant of establishing his innocence, except in certain specified cases.

S. 43 provides that in a newspaper libel action the plaintiff be non-suited unless he gives evidence on his own behalf.

S. 48. The testimony of a plaintiff in an action for breach of promise of marriage must be corroborated by some material evidence.

S. 49. "In an action to recover damages for seduction brought by a parent of the woman seduced, or by a person standing to her in the place of a parent, it shall not be necessary to allege or prove that she was in the service of the plaintiff, or that he sustained any loss of service by reason of the seduction."

Apparently there is nothing in this section to prevent a parent of a woman seduced, who has sustained no loss of service, and her employer, who has sustained loss of service, from both bringing an action to recover damages for the same seduction.

S. 50. Corroboration required in cases of bastardy.

SS. 57-73 deal with the proof of certain documents.

S. 89. A copy of an entry in a banker's book shall be evidence of such entry, subject to the provisions of the Act.

SS. 97-106 deal with the mode of taking evidence.

SS. 107-108 deal with depositions.

Land (No. 29).—Land Act Amendment Act, 1906. Further amends the Land Act, 1898.

S. 3 repeals s. 5 of the principal Act. The Governor may acquire from any person, with his consent, any land or interest in land which he may deem it advisable to acquire for any purpose.

S. 4 empowers the Governor to resume land from pastoral leases for agricultural settlement.

S. 7. The Governor may establish local Land Districts.

S. 8. The Governor may appoint a District Land Board for any land district.

S. 38. The Governor may declare certain lands open for selection as grazing leases.

S. 70. The Governor may declare any Crown Lands open for selection as special settlement lands.

Criminal Law.—Criminal Code Amendment Act (No. 31) amends the Criminal Code (1 & 2 Edw. VII, No. 14).

S. 2. S. 20 of the Code is amended. It is henceforth provided that punishment inflicted upon a prisoner already undergoing sentence may be directed to take effect from the expiration of the preceding sentence, and that sentences pronounced together may be directed to take effect concurrently or cumulatively.

When, upon conviction, a question of law is reserved and the convicted person is admitted to bail pending the decision of the Supreme Court, the period during which he has been at liberty upon bail shall be deemed not to have been served under the sentence.

S. 5. A new section is inserted in the Code. Any person who, without lawful justification, places in any water-hole upon private or Crown lands poisonous or noxious matter, rendering it unfit for human consumption or for consumption by cattle, etc., is guilty of a misdemeanour.

"On any prosecution under this section the onus lies on the accused person to prove all facts negatived in the complaint or indictment."

S. 7. A new section is added, rendering directors, officers, or agents of Companies wilfully making false statements as to their Company's business, with intent to increase or lower the market value of the Company's shares, guilty of a misdemeanour punishable with two years' imprisonment with hard labour, and a fine. Proceedings under this section must be authorized by the Attorney-General.

S. 8. A new section is added, making it a misdemeanour punishable with two years' hard labour, and a fine, for a person required or permitted to give certificates, etc., of births, deaths, or marriages to give information false in any material respect.

S. 12 amends s. 558 of the Code. Criminal Courts are to take judicial notice of the Attorney-General's signature, and indictments purporting to be signed by a person authorized to prosecute are to be deemed to be duly signed in the absence of proof of the contrary.

The Attorney-General or other person authorized to prosecute may indict a person committed for trial for other offences than those mentioned in the commitment.

S. 13 substitutes for s. 667 (1st par.) provisions by which it lies in the discretion of a Court trying indictable offences to reserve a question of law for the Supreme Court. Provision is also made for appeals to the full Court against a refusal to reserve a question of law.

Other Amendments.—SS. 185 (par. 7); 187 (par. 4) of the Code s. 3 of 37 Vict., No. 4, and s. 5 of the Criminal Code Amendment Act, 1904, are repealed.

The following sections of the Code are also amended: 338, 493, 501, 512, 699, 670, 710.

Municipalities.—No. 32 is a long Act to consolidate and amend the law relating to Municipalities.

S. 10. Municipalities to be bodies corporate, with a common seal.

Boats.—No. 33 is an Act to amend the Boat Licensing Act, 1878.

S. 1. The Act to be read as one with the Act of 1878.

S. 6 repeals ss. 13 and 14 of the principal Act.

S. 8 authorizes every licensing board to inquire into charges of incompetency or misconduct on the part of any licensed master or coxswain.

S. 9. Every licensing board may make regulations. SS. 1-16 enumerate the matters on which such regulations may be made.

S. 10. Every such regulation shall, upon approval by the Governor and publication in the *Government Gazette*, have the force of law.

Mines (No. 36).—An Act to provide for the Inspection and Regulation of Mines.

S. 5. The Government may appoint inspectors of mines.

S. 20. No person to act as manager of more than two mines.

S. 37 provides for arbitration under the Act.

S. 50. Employers to satisfy themselves of the safety of the appliances in use, and failure to report danger to be an offence under the Act.

S. 53. No boy under the age of sixteen years, and no female, shall be employed below ground in any mine.

Miscellaneous Acts:

Agricultural Bank.—No. 15 consolidates and amends the law relating to the Agricultural Bank.

Dividend Duties.—No. 30 amends the Dividend Duties Act, 1902.

Savings Bank.—No. 9 changes the name of the Post Office Savings Bank to "Government Savings Bank," and consolidates and amends the law relating to it.

Prisons.—No. 9, Prison Amendment Act, 1906.

8. PAPUA (BRITISH NEW GUINEA).

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—10.

By Proclamation of the Governor-General of the Commonwealth of Australia, published on September 1, 1906, the style of the Possession of British New Guinea was altered to that of the Territory of Papua, and the Papua Act, 1905,[1] of the Commonwealth Legislature was brought into operation on September 1, 1906.

Three Ordinances were made in 1906 before this Proclamation took effect.

Nos. 1 and 3 are Appropriation Ordinances.

Pearl Buyers.—No. 2 prohibits the purchase of pearls from aboriginal natives of British New Guinea by persons not having licences granted under the Act. A licence fee of £50 is levied.

Seven Ordinances were made by the Papuan Legislature under the new system of government. Of these, one (No. 10) is an Appropriation Ordinance.

Royal Commissions.—No. 4 provides machinery for the execution of Commissions of Inquiry issued by the Governor-General of the Australian

[1] See Journal, 1906, pp. 434, 463.

Commonwealth. A Royal Commission had been issued by the Governor-General on August 27, 1906, to inquire into and report upon the present conditions, including the methods of government, of British New Guinea, and upon the best means for their improvement. The Ordinance empowers the Commissioners to send for witnesses and documents and to examine witnesses on oath or affirmation, imposes penalties for refusal to attend or to produce documents or to be sworn or give evidence and false evidence.

Lands.—No. 5, which repeals the Land Ordinance, 1899,[1] regulates dealings with lands in Papua under s. 41 of the Papua Act, 1905. It was reserved for the pleasure of the Governor-General and was assented to on November 13, 1906.[2] Save as specially provided in the Ordinance, natives are denied power to sell, lease, or otherwise deal with or dispose of lands, and their contracts to do any of these things are void (s. 3). The prohibition does not apply to natives who by will or intestacy have acquired land alienated by the Crown; but their contracts dealing with such land are not valid unless approved by the Curator of Intestate Estates (s. 4). The Crown may lease or purchase lands from natives (s. 5); the documents of lease or purchase must be authenticated in a manner to be prescribed (s. 6). The Crown may also lease or re-purchase land the subject of a Crown grant (s. 7), and may take possession of waste or vacant land (s. 8). The fee simple of Crown lands may not be sold: and the longest interest which may be created is a lease for ninety-nine years, reserving all minerals except coal (s. 9). Except for temporary purposes or by virtue of some right or possession under this or some other ordinance, only natives may occupy land owned by natives, and no person may occupy Crown land (s. 9).

Large powers are given as to the reservation from lease of land which is or may be required for certain specified purposes, including defence, quays and harbours, means of communication, camping-places for travelling stock, and reservoirs, markets, schools and places of non-scholastic instruction, public recreation and for cemeteries (s. 32).

For the first five of these purposes the Lieutenant-Governor may by notice gazetted acquire or reserve land on paying full compensation to be assessed in manner to be provided by regulations (s. 33).

Quarantine.—Ordinance No. 7 amends the law of quarantine, which rests on the adopted Queensland Quarantine Act of 1886.

The Ordinance requires vessels arriving from beyond the Territory to hoist a blue flag known as the visiting flag (s. 3); until pratique has been granted the vessel may not communicate with the shore, nor may any one go alongside except the pilot and the health officer (ss. 1, 3).

Special regulations may be made as to vessels arriving at Woodlark Island and proceeding to a port in Papua (s. 4).[3]

[1] Journal, N.S. 1900, p. 580.

[2] *Papua Gazette*, December 18, 1906.

[3] The regulations were published in the *Papua Gazette* of January 19, 1907.

Quarantine when ordered is performed at the quarantine ground[1] or such other place as the health officer directs (s. 2). Power is given to mitigate the penalties for breach of the provisions of the Act of 1886 (s. 5).

Inflammable Oils.—Ordinance No. 8 amends the Queensland Navigation Act of 1876 as adopted[2] by declaring that the term "explosive" in Pt. VII. thereof shall be construed to include naphtha, kerosene and all other inflammable oils (s. 1). The amended definition does not apply to ss. 171 and 172 of the Act of 1876. The penalty under s. 164 as to explosives other than gunpowder is altered to a fine not exceeding £20, or in default of payment imprisonment with or without hard labour for not over three months (s. 4).

Criminal Law.—Ordinance No. 9 amends s. 664 of the Queensland Criminal Code, 1899, as adopted for the Territory, by allowing the administration to prescribe whether sentence of death is to be executed within or without a prison.[3]

Liquor.—An Ordinance (No. 6) for amending the liquor laws of Papua by setting up a system of local option vote was disallowed by the Governor-General.[4]

9. FIJI.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—21.

Consolidation and Interpretation.—In 1906 a new 8vo edition was issued of the Ordinances from 1875—1905. The edition is a consolidation and not merely a reprint. It was prepared under the authority of an Ordinance of 1903,[5] and is, as to the Ordinances contained in it, the sole and proper Ordinance-book of the Colony. As part of the process of the consolidation the numbers of the Ordinances in the new edition have been changed from those given in the former yearly issues of the Ordinances. The arrangement of the edition is chronological and not under titles. The index refers the reader not to the page of the edition, but to the year, number, and section of the Ordinance indexed.

Interpretation.—Ordinance No. 18 of 1906 repeals Ordinance 2 of 1875 and lays down rules of interpretation based mainly on the Imperial Interpretation Act of 1889 (52 & 53 Vict. c. 63), but partly on the Australian

[1] Viz. Port Moresby and Samarai. See regulations gazetted December 21, 1906.

[2] The chief Ordinance regulating the adoption of Queensland Acts in British New Guinea is No. 4 of 1888.

[3] See *Papua Gazette*, January 19, 1907, p. 3.

[4] See *Papua Gazette*, January 19, 1907, p. 5.

[5] Journal, N.S. 1904, p. 382. Certain revisions effected by Ordinance No. 9 of 1906 are embodied in this edition.

Commonwealth Act No. 2 of 1901 (see Journal, N.S. 1902, p. 250). Incidentally it requires judicial notice to be taken of Proclamations (s. 18).

Finance.—Ordinances Nos. 1 and 12 are Appropriation Ordinances.

Immigration.—Two Ordinances deal with immigrants.

Polynesian.—No. 4 amends the Polynesian Immigration Ordinance (No. 21) of 1888 [1] by abolishing the Public Trust Account and the Polynesian Immigration Fund created under that Ordinance, and by transferring to the general revenue account of the Colony the balance standing to the credit of the account and fund (s. 3). It places upon the general revenue the charges formerly borne by the account and fund, including the cost of returning immigrants to the places where they were recruited, and the payment to immigrants of sums paid into the account as their wages by employers before May 17, 1906 (s. 4). The Ordinance makes new provision for the payment of wages of indentured immigrants. The wages are to be paid by the employer to the magistrate of the district in which the immigrant is indentured, a wages list is lodged where the payment is made, and the payment is certified therein by the magistrate.

The magistrate pays to the immigrant not more than one-quarter of the wages paid in, and the balance is transferred to the Polynesian Wages Account and paid over to the immigrant when his indentures expire. Sums left unclaimed for five years after they fall due are transferred to the general revenue account (ss. 5-10).

The right to have a free return passage home is restricted to the case of immigrants coming to the Colony after May 17, 1906, who are entitled to a free passage home within ten years of the time when the right first accrued. This applies to cases where the immigrants re-indenture themselves instead of returning home on the completion of their first indentures. The right extends to children of immigrants entering the Colony with them till they are twenty-four, and to children born in the Colony till they are twelve (s. 11).

Certain amendments are made in the provisions for extending indentures (s. 12), and provision is also made for allowing under conditions the temporary transfer of an indentured immigrant from one to another plantation of his employer (s. 13).

Indian.—Ordinance No. 8 makes, as to free return passages for Indian immigrants entering the Colony after May 17, 1906, and their children, arrangements similar to those above stated as to Polynesians. But the free return passage must be claimed within two years of the time when the right to it first accrued.

Lunatics.—Ordinance No. 19 puts an end to the Lunatic Immigrants Fund,[2] and transfers to general revenue the balances to the credit of the fund and imposes on the general revenue the charges formerly falling on the fund.

[1] Printed in the new Ordinance-book as No. 5 of 1888.

[2] Created under the Public Lunatic Asylum Ordinance (No. 3) of 1884, s. 45.

Master and Servant.—No. 7 amends the Masters and Servants Ordinance (No. 9) of 1890[1] by substituting for the words "fixed rate of 2*s.* for every month over which the contract shall extend" a sliding rate, viz. "such rate per month of the term of the contract as the Governor in Council may prescribe as the rate at which the native tax may be commuted in the district where the contract of service is made."

Sea Carriage.—Ordinance No. 14 applies to ships carrying goods from the Colony to places outside the provisions of the Australian Commonwealth Act, 1904, No. 14, ss. 5-8 declaring void and prohibiting the insertion in shipping documents of clauses relieving from liability for damage caused by improper storage, condition of the hold, and improper manning and equipment, and implying certain clauses in the bill of lading.

Criminal Procedure.—Ordinance No. 15[2] fixes the dates for the ordinary sessions of the Supreme Court for criminal business, viz. April 21, July 21, September 21, and December 1, and empowers the Chief Justice to adjourn the ordinary sessions or to hold special additional sessions. It further provides for the summoning of assessors for criminal trials in the Supreme Court.

Criminal Evidence.—Ordinance No. 17 is an adaptation to the Colony of ss. 1-3 of the Imperial Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36).

Railways and Bridges.—Ordinance No. 10 amends s. 1 of Ordinance No. 3 of 1896[3] and provides for the punishment on summary conviction of persons injuring or attempting to injure bridges or to injure or obstruct railways or tramways, or throwing missiles at engines or trains.

Police.—Ordinance No. 13 amends a mistake in the Constabulary Ordinance, No. 16 of 1905.[4]

Defence.—Ordinance No. 3 repeals the Volunteer Ordinance, 1898[5] (s. 2), and provides for the establishment of a rifle association in and for the Colony (s. 3) formed of the members of rifle clubs duly formed in accordance with regulations made by proclamation of the Governor, but to be submitted to the Legislative Council for their approval. The subjection of the clubs to the regulations is conditional on their passing a resolution declaring willingness to come under the regulations (s. 8).

In case of actual or apprehended invasion or of disturbance threatening the security of life or property, the Governor may by proclamation call out for actual service the whole association or any specified club or clubs. Disobedience to the call entails penalties; but the service, except by consent of the member, must be within the limits of the Colony. The Ordinance also provides for military command, discipline and pay.[6]

[1] Printed as No. 2 of 1890 in the new Ordinance-book.

[2] This Ordinance repeals ss. 2 and 64 of the Criminal Procedure Ordinance, No. 10 of 1875, printed in the new Ordinance-book as No. 4 of 1875.

[3] Journal, O.S. vol. ii. p. 207.

[4] Journal, 1906, p. 466. In the new Ordinance-book this Ordinance is No. 7 of 1905.

[5] Journal, N.S. vol. i. p. 518.

[6] Regulations made under the Ordinance were proclaimed on June 11, 1906.

Dogs.—Ordinance No. 2—which repeals and re-enacts with amendments the Dog Registration Ordinance (No. 15) of 1884 [1]—consists of two parts. The first makes provision for dealing with dogs which are dangerous to person or property. The provisions of Part I. (re-enacting part of the Ordinance of 1884) are stringent. Besides clauses empowering magistrates to order dangerous dogs to be destroyed or kept under control (s. 6) and requiring owners to muzzle dogs known to be dangerous or to have injured any person or cattle or any domestic animal (s. 7), penalties are imposed on a person whose dog in a public place rushes at or attacks any person, horses, cattle, or domestic animal (s. 8). The rule as to *scienter* is abolished as to all injuries done by dogs (s. 11). Any person who sees a dog at large biting or attacking any person or any horse, cattle, or poultry, or who is himself attacked or bitten, may destroy the dog (s. 9), and when a dog is running at large among and worrying cattle or poultry the owner of the animals or his servant or agent may destroy the dog (s. 10).

The second part of the Ordinance operates only in places where it is brought into force by proclamation of the Governor (s. 4 [2]). It continues the system of registration of dogs established in 1884 at a fee of 2*s.* 6*d.* The only novel provision is that for a system of badges and for the seizure of badgeless dogs (ss. 24-7). In the case of native towns provision is made for registering two dogs without fee in the name of the chief of the town (ss. 30, 31).

Towns.—Ordinance No. 5 [2] establishes for every town a Valuation Appeals Board to hear appeals against assessments by the Town Board. The tribunal consists of the stipendiary magistrate and two members appointed by the Governor (s. 2). It also gives town boards power to make bye-laws as to lights on vehicles (s. 4).

Shops.—Ordinance No. 11 provides for the early closing of shops and regulates the hours of employment therein. The closing times are seven and ten o'clock on Saturdays and all day on public holidays; and assistants may not be kept for more than half an hour after closing time (s. 3).

Fruit Export.—Ordinance No. 21 makes a licence necessary to authorise export fruit beyond a small quantity of bananas, and provides for the inspection of fruit for export to see that it is in accordance with the regulations as to condition, etc.

Missionary Ships.—Ordinance No. 20 exempts missionary vessels from harbour dues levied under the Harbour Ordinance, No. 2 of 1880.[3]

Water Supply.—Ordinance No. 6 amends the Swan Water Supply Ordinance (No. 12) of 1886 [4] by distinguishing between rates for domestic

[1] Printed in the new Ordinance-book as No. 8 of 1884.

[2] This Ordinance repeals s. 56 of the Towns Ordinance (No. 16) of 1883, printed in the new Ordinance-book as No. 5 of 1883.

[3] Printed in the new Ordinance-book as No. 1 of 1880.

[4] Printed in the new Ordinance-book as No. 6 of 1886.

and non-domestic purposes (s. 2) and by revision of the power of the Water Commissioner as to pipes, inspection, repairs, meters, and the charges for non-domestic supply and supply to vessels.

Lands Acquisition.—By Ordinance of the Colony (1878 No. 1, Crown acquisition, and 1905 [1] No. 14, native lands) power has been given to acquire lands for public purposes. The definition of public purposes in these acts is extended by Ordinance No. 16 of 1906, so as to exclude any undertaking, proposal, or policy which appears to the Governor in Council desirable or directly benefiting the Colony.

10. THE DOMINION OF NEW ZEALAND.

[*Contributed by* Godfrey R. Benson, Esq.]

Acts passed—Public, 65; Local and Personal, 39;
Private, deemed to be Public, 3.

Public Revenues Acts Amendment (No. 1).—This Act was passed in a special Session of Parliament, to make the provision for the public service which became necessary owing to the late date of the regular Session and the consequent delay in the passing of the Appropriation Act.

Supply.—Nos. 2 and 6 are Supply Acts.

Opium Prohibition Act Amendment (No. 3).—Persons permitted to sell opium having already been required to keep a record of every sale, this Act requires purchasers from them to keep a similar record of every purchase.

Registration of Births Extension (No. 4).—This is an Act such as has twice before been passed, giving a time within which births, for the registration of which the due time has already expired, may be registered.

Payment of Jurors (No. 5).—This Act cuts down the remuneration of common jurors from 10*s.* a day to 8*s.* a day, when they attend more than four hours, and 4*s.* a day in other cases.

Fire Brigades (No. 7).—This Act provides for the establishment, in each of the principal towns and of such other districts as may at any time be decided by the Governor in Council, of a Fire Board, with members elected by the insurance companies and the local authority respectively and a member to be appointed by the Governor, which Board will be charged with the maintenance and control of a fire brigade. The estimates of the Board, after approval by the Minister charged with the administration of the Act, are to be met by a rate on Government property, a contribution from the insurance companies, and a contribution from the local authorities The Board will have power to make bye-laws in regard (*inter alia*) to the storage of inflammable substances, including hay and straw; and the Superintendent appointed by the Board will have free access to all buildings to

[1] Journal, N.S. vol. vii. p. 466.

see that the requirements of such bye-laws are fulfilled. No building may be used for any sort of public gathering unless it is provided to the satisfaction of the Superintendent with means of escape in case of fire. Damage done to property by the Superintendent in putting down a fire is to count for purposes of insurance as damage done by fire.

Habitual Criminals and Offenders (No. 8).—This most important Act provides means whereby an habitual criminal may, upon conviction for an offence, be duly dealt with as an habitual criminal and not merely punished for that particular offence. A person who has been twice convicted of any offence of a class comprising certain sexual offences and abortion, or who has been four times convicted of any offence of a class comprising wounding, housebreaking, theft, false pretences and other offences against property, may, if again convicted upon indictment of an offence coming within either of these classes, be declared by the judge to be an habitual criminal. Further, any such person, or any person who has been convicted six times of any of certain offences of a less serious character, may, if again convicted by a magistrate of any of the last-named offences, be sent by him before a judge for treatment as an habitual offender. A person thus declared to be an habitual criminal will be liable to detention in a special reformatory prison during the Governor's pleasure. He will have, however, the right of applying at any time to the Supreme Court or a judge thereof for a recommendation that "having sufficiently reformed, or for other good and sufficient reason" he may be discharged. The Court or judge will then "make inquiry in such manner as may be deemed fitting." If thereupon the Court or judge recommends his discharge, the Governor may discharge him, but may at the same time order him (under penalty) to report himself periodically during two years (or less), if still in New Zealand, to some Probation Officer under the First Offenders' Probation Act, 1886. If during such period he is convicted either of failure duly to report himself, or of any offence punishable with more than three months' imprisonment, the Court (including a Court of summary jurisdiction) before which he is convicted may recommit him to the reformatory prison for detention during the Governor's pleasure. Persons detained in reformatory prisons are to be employed in labour, and credited with wages which will either be applied to the maintenance of their wives and children (if any), the balance (if any) being paid over to the prisoners themselves upon their discharge.

Government Valuation of Land Act Amendment.—No. 9.

Training-ships (No. 10).—This Act, which is a good example of the extent to which New Zealand legislation leaves the Executive Government to settle details for itself, empowers the Governor in Council (in the matter of appointments, the Governor alone) to do all that may be necessary for the establishment and maintenance of training-ships, the expenses to be paid out of moneys appropriated from time to time by Parliament.

Sale of Explosives (No. 11).—This Act provides for the licensing of dealers in and carriers of explosives, and the prohibition of sale or carriage of them by unlicensed persons. It requires every sale of explosives to be entered in a book, and all explosives to be delivered in marked packages. It prohibits the sale of these to persons under fifteen years of age. It also prohibits such sale to persons unknown to the vendor except in the presence of a witness who is known to the vendor and knows the purchaser, and who with the buyer must sign the required entry in the vendor's book.

Bank Shares Transfer (No. 12).—This is an amending Act apparently intended to remove an obstacle to the transfer of bank shares outside the Dominion.

Fisheries Conservation Act Amendment (No. 13).—Most of the provisions of this Act are for the furtherance of the acclimatisation of salmon and trout.

Jubilee Institution for the Blind (No. 14).—This Act alters the constitution of the Board of the Jubilee Institute for the Blind at Auckland, so that the trustees shall be appointed partly by the Governor and partly by the voluntary subscribers. It also requires the Institute to admit such children between seven and sixteen years of age as the Minister of Education may send there, and authorises the Government to pay for their maintenance and education there.

Workers' Dwellings Act Amendment (No. 15).—This Act amends the definition of "workers" in the principal Act by raising the limit of income from £156 to £200. It also permits the poorer applicant to be preferred when two or more workers apply for the same dwelling.

Savings-bank Profit (No. 16).—This Act authorises the remuneration out of profits of trustees of savings-banks, and extends to the whole country a power, previously confined to the Provincial District of Otago, to pay over profits of a savings-bank to other charitable institutions, such as hospitals.

South Island Landless Natives (No. 17).—This Act provides for the setting apart of Crown lands in the South Island as reserves for landless natives, and the settlement of such natives upon them with close restrictions upon their power of alienating the lands allotted to them. When in this process of settlement an unmistakably large area of land has, through mistake, been allotted at first to any native family, part of it may be taken back by the Native Land Court and held by the Crown "as an endowment for the recreation and education of natives."

Private Hospitals (No. 18).—This Act requires private hospitals to be licensed. Before such licence is given the Inspector-General of Hospitals must be satisfied as to the fitness of the buildings, etc., and the Minister administering the Act must be satisfied as to the fitness of the licence-holder. The Minister may cause any licensed hospital to be inspected and may revoke the licence at his discretion.

Government Advances to Settlers (No. 19).—This is in the main a consolidating Act.

Firearms (No. 20).—This Act prohibits sale to or possession by persons under sixteen of firearms or ammunition.

Agricultural Implement Manufacture, Importation, and Sale (No. 21).—This Act continues the Act of 1905 for a year more.

Public Revenues (No. 2) (No. 22).—This is an Act to facilitate the carrying on of the public service in the event of delay in any year in the granting of Supply.

Unclassified Societies Registration Act Amendment.—No. 23.

New Zealand Loans Act Amendment (No. 24).—This Act institutes (not on a liberal scale) sinking funds for the redemption of the loans hitherto raised for war and defence purposes, and also for the loans raised for purposes of the Lands Settlement Acts. The Colonial Treasurer is without further appropriation to pay into each of these sinking funds 1 per cent. per annum of the amount of the loans concerned. The former of these funds is to be accumulated at compound interest by the Public Trustee till 1945. In the case of the latter fund the Public Trustee is directed, till the Colonial Treasurer demands the money for redemption or further investment for lands settlement, to invest it "on securities yielding the highest rate of interest."

New Zealand International Exhibition (No. 25).—This interesting Act (*inter alia*) enables the Governor in Council to suspend or modify for the benefit of the New Zealand International Exhibition the provisions of the Industrial Conciliation and Arbitration, Factories, and Shops and Offices Acts, and also, in the case of visitors to the exhibition and exhibitors, those of the Chinese Immigrants and Immigration Restriction Acts, and to remit or reduce customs duties. On the other hand it applies to the Exhibition the laws relating to the fencing of machinery and to defective machinery.

Customs Duties Adjustment (No. 26).—On June 8, 1906, the Governments of New Zealand and Australia entered into a provisional agreement for "reciprocal and preferential concessions in certain customs duties"; and on August 30 of the same year a resolution of the House of Representatives authorised the collection of duties in accordance with this agreement pending its consideration by Parliament; but on October 3 of the same year the House of Representatives decided not to ratify the agreement. This Act was accordingly passed in order that the duties levied in pursuance of the resolution of August 30 should be deemed to have been in force from that date till October 4, and the previously lawful duties be deemed to have revived on the latter date. It provides further for the refunding of the excess paid in cases when the effect of the resolution of August 30 was to raise the duty.

Aid to Public Works and Land Settlement (No. 27).—This Act authorises the expenditure of £450,000 on railway construction, £75,000 on additional rolling stock, £400,000 on roads, etc., to open up "back blocks," £25,000 on the like for the purpose of the gold-fields, and £50,000 on extension of telegraphs.

Juvenile Offenders (No. 28).—This Act requires the police and magistrates

to make arrangements for the hearing of cases against offenders under sixteen years of age at special sittings and not at the ordinary court-house, for the exclusion of the general public from the court during such sittings, and for avoiding, whenever possible, the detention of such offenders in a gaol or lock-up pending trial.

Local Bodies Loans Act Amendment.—No. 29.

Public Works Act Amendment (No. 30).—It may be consoling to some writers to find, from one of the amendments in this Act, that the authors of the compiled Public Works Act of 1905 succeeded in one section in saying the exact converse of what they meant. The most important provision of this Act empowers the Government to undertake works for utilising water power to generate electrical energy, and for the transmission, use, supply, and sale of electrical energy.

Post Office Act Amendment (No. 31).—One of the provisions of this Act extends to libellous matter and to advertisements of lotteries or "schemes of chance," the drastic powers which the Postmaster-General already possessed for the interception and destruction of indecent or immoral printed or written matter.

Motor Regulation (No. 32).—This is mainly a consolidating Act. There is not in New Zealand a general speed-limit for motors, though of course a special speed-limit can be imposed for a particular place by bye-law. The registration of motors is a measure which can be adopted by local authorities at their direction. No licence is required for drivers.

Arbitration Act Amendment.—No. 33.

Queen's Scholarships.—No. 34.

Offensive Publications (No. 35).—This Act amends an Act of 1892 by empowering a justice upon the sworn complaint of any person to issue a search warrant for obscene pictures or printed or written matter kept for any purpose of gain. Such matter when found may, upon the order of two justices, be destroyed.

Police Offences Amendment (No. 36).—This Act strengthens the law against Sunday trading by repealing the words "to public view" in a previous enactment prohibiting the keeping of stores, bars, etc., "open to public view" on Sunday.

Adoption of Children Act Amendment (No. 37).—This Act forbids any person adopting a child under the principal Act (of 1895) to receive a premium, except with the consent of a stipendiary magistrate.

High Schools Reserves Act Amendment (No. 38).—This Act enables trustees of high schools to borrow money with the consent of the Governor.

Government Advances to Workers (No. 39).—This Act empowers the Government to lend money to "workers" (*i.e.* persons "employed in manual or clerical work" with an income not exceeding £200) for the purpose of erecting dwelling-houses for themselves on urban or suburban land. Not more than £350 may be lent to any one borrower. The money is to be re-

paid by instalments in thirty-six and a half years. The interest is to be 5 per cent., or 4½ per cent. if paid within fourteen days of the due date. The Government may borrow £200,000 for the purpose of such advances.

Industrial Conciliation and Arbitration Act Amendment (No. 40).—Under this Act, the President (henceforth called the Judge) of the Arbitration Court need not be a Judge of the Supreme Court, but must be a person eligible to be a judge of the Supreme Court, and may from time to time be made a temporary judge of the Court when it requires assistance.

Defence Act Amendment (No. 41).—The chief provisions of this Act are for the appointment of a Council of Defence and an Inspector-General of the Defence Forces. Also it allows Volunteers (not on actual military service) to quit the forces after one year.

Sea Fisheries (No. 42).—This Act (*inter alia*) extends the provisions of the principal Act (of 1894) to fresh waters.

Stamp Act Amendment (No. 43).—This Act (*inter alia*) authorises the appointment of a special Minister for the administration of the Stamp Act. It also provides that assessment of real property for death duties shall take place under the Government Valuation of Land Act Amendment Act, 1903.

Teachers' Superannuation Act Amendment.—No. 44.

Habitual Drunkards (No. 45).—Under this Act a person who is convicted of drunkenness for a fourth time within nine months may be committed by the convicting magistrate for a period not less than a year to an institution for the reclamation of drunkards. Provision is made for the inspection and authorisation by Government of such institutions.

Scenery Preservation Amendment (No. 46).—An Act of 1903 authorised the reservation of Crown lands "possessing scenic or historic interest or on which there are thermal springs," and the addition to them of land, in private ownership, to be acquired for the purpose by the Crown. The Governor was by that Act authorised from time to time to appoint Commissioners to advise as to what lands should be dealt with under the Act. The chief object of the present Act is to set up a permanent Board for that purpose.

Mining Act Amendment (No. 47).—This Act (*inter alia*) requires the payment of one and a half times the ordinary wages in all cases of work in mines on Sundays and holidays.

Scaffolding Inspection (No. 48).—The Governor may under this Act appoint inspectors for defined districts, and after such appointment any person within such a district must notify the inspector before he erects any scaffolding more than 16 ft. high or any swinging stage. If the inspector thinks any such scaffolding or stage or any gear connected therewith unsafe, he may give such directions, to remedy the defect, as he thinks fit, and, subject to an appeal to the Minister of Labour, his directions must be obeyed. Further, the Governor is empowered to make, by Order in Council, regulations relating to scaffolding and gear used in connection therewith.

State Coal-mines Account.—No. 49.

Apiaries (No. 50).—This Act, which applies to two or three named diseases of bees and to others which may be declared by the Governor in Council, provides for the appointment of inspectors, requires the owner of any hive to notify any of the diseases in question, gives the inspector large powers to treat or extirpate the disease, and prohibits sale of bees or honey from an infected hive or apiary. No compensation is allowed for any destruction done under this Act.

Maori Land Claims Adjustment and Laws Amendment (No. 51).—This is one of the Acts passed almost every year in regard to Maori land, making detailed amendments in the machinery of administration and determining a number of particular cases of difficulty as to succession to land and the like.

Land Tax and Income Tax (No. 52).—The rates are unchanged.

Town Districts (No. 53).—It would appear from this Act that the very brief Town Districts Act of 1905 (reviving a power of creating special highway authorities in special districts, other than boroughs, within the area of a county) was too briefly drawn to effect its purpose at all; in particular, that Act appears to have left untouched provisions of earlier Acts which were wholly incompatible with its working.

Legislative Officers' Salaries Act Amendment (No. 54).—The salaries of the Speaker and Chairman of Committees of the House of Representatives are by this Act increased to £800 and £500 respectively.

Tourist and Health Resorts Control (No. 55).—This Act creates a "Department of Tourist and Health Resorts," to which is given the management of certain reserves specified in a schedule, and of others which may from time to time be set apart by Order in Council. Special provision is made for the granting, by the Minister administering the Act, of portions of these reserves for the purposes of games, for the erection on them of pavilions and stands, for limiting the amount of gate money which may be charged for admission to such grounds, and generally for the regulation of the games to be played on them.

Municipal Corporations Amendment (No. 56).—The most interesting provision of this Act is one requiring that every new dwelling-house in a borough shall have at the side or in the rear an open space, clear of any sort of erection, exclusively belonging to it. The minimum size of such a space must be 300 superficial ft.; it must extend along the whole depth or width of the house (as the case may be); the distance across it (as to which the requirements vary with the height of the house) must be, in the case of a house exceeding 35 ft. in height, not less than 30 ft. from the house or any outbuilding of the house. There are also provisions empowering councils to make bye-laws for lodging-houses, prescribing, in accordance with the number of persons accommodated, the number and size of rooms.

Factories Act Amendment (No. 75).—This Act empowers the Governor in Council to prescribe rules for factories "where any noxious or dangerous

gas or material exists, or is generated or used." It rests with the Governor to declare what is noxious or dangerous.

Statute Law Amendment (No. 58).—This is an Act giving effect to an interim Report of the Commissioners appointed under the Reprint of Statutes Act, 1895. Most of its provisions are to rectify omissions in the drafting of Statutes; one of these, however, has the effect of making it possible for a judge to authorise the marriage of a minor when the parents refuse their consent, if he thinks such refusal unreasonable or wrong.

Testator's Family Maintenance (No. 59).—This Act consolidates and amends two short Acts, of 1900 and 1903 respectively. The former of these Acts enabled the Court to make provision out of a testator's estate for his or her husband, wife or children, when the testator had not adequately done so; the latter added a brief necessary provision as to death duties. The amendments comprised in the present Act in the main make explicit the very ample discretion which seems to have been given to the Court by the brief language of the original Act, as to the manner in which the provision might be made and the regard to be had to the interests of one or another of the legatees under the will. In addition, however, the term within which application for such provision may be made is extended from six months to twelve from the death, or in the case of an executor applying for an infant to two years from the probate, and may be further extended by the Court upon due cause shown. The Court may subsequently vary or discharge an order when the person for whose benefit it was made has come into other property; charges upon the provision made by the Court are made invalid without the consent of the Court; and a right of appeal to the Court of Appeal is given or made explicit.

Reserves and other Lands Disposal and Public Bodies Empowering (No. 60).—The character of this Act may be indicated by the descriptions in the margin of three of its seventy-six sections: "Forfeiture cancelled, Nuhaka Survey District"; "Reserve for drill-shed, Rangitikei District"; "Rubbish reserve cancelled, Mangaweka."

Public Health Act Amendment (No. 61).—This Act empowers district boards or hospital boards to combine with one another for sanatoria for consumptives.

Maori Land Settlement Act Amendment (No. 62).—This Act (*inter alia*) makes provision for dealing with Maori land infected with weeds. It also enables a native to alienate without consent of the Native Land Court land which he has acquired in any manner from any European, or which he has bought for money, or which he leases from the Crown.

New Zealand and South African Customs Duties Reciprocity (No. 63).—This Act, passed in view of negotiations for a "reciprocal customs treaty with South Africa," empowered the Governor, if such a treaty were concluded, to bring its provisions into force before the next meeting of Parliament,

by an Order in Council which was to continue in effect for twenty-one days after the opening of the Session.

Appropriation.—No. 64.

Immigration Restriction Act Amendment (No. 65).—This Act, which was reserved for the signification of His Majesty's pleasure thereon, prohibits the landing in New Zealand of any person who within two years before had been in prison for any offence punishable in New Zealand by imprisonment for two years or upwards or by death, unless the offence has been "a mere political offence" or he has been pardoned.

V. SOUTH AFRICA.

1. CAPE COLONY.

The legislation will appear next year.

2. NATAL.

[*Contributed by* The Hon. J. F. Bird, *Acting Attorney-General.*]

Acts passed—55.

Firearms and Ammunition (No. 1).—This is a consolidating and amending Act. It imposes certain restrictions on the import and export of firearms and ammunition; also requires persons dealing in firearms to take out a dealer's licence, and sets forth conditions to be compiled with by such dealers.

No Native or Asiatic is allowed to possess any firearm or ammunition without a permit from the Secretary for Native Affairs.

No. 22. Any Native or Asiatic may be granted exemption from Act 1, 1906, by the Governor.

Immigration (No. 3).—This Act amends the Immigration Restriction Act, 1903. The reference to domicile in s. 4 (*f*) and s. 32 (*a*) of the Act for 1903, to apply only to domicile acquired by residence in Natal on the part of the person seeking to enter the Colony, and not to domicile acquired in any other manner.

Finance: *Loans.*—No. 4 authorises the raising of a temporary loan of £500,000, in accordance with the provisions of the General Loan Law, 1882; the money so raised to be applied to the payment of expenses in connection with the suppression of the Native Rebellion.

No. 47 authorises a further temporary loan of £500,000, to be applied

to the payment of expenses in connection with the suppression of the Native Rebellion.

No. 53 authorises the Governor to borrow the sum of £100,000 from the Consolidated Loans Fund, to be used for the prevention or suppression of the disease known as East Coast Fever.

Fencing.—Act No. 52 extends the operation of the Fencing Law, 1887, to the whole Colony, except the Province of Zululand and the Northern Districts, to which it may be extended by Proclamation.

The Fencing Law of 1887 is one under which farmers who erect fences as the boundary between their own and neighbouring farms may compel the owners of the adjoining farms to contribute one-half of the cost, within a limit of price fixed by the law.

Hitherto the law has applied only to the districts to which it has been from time to time applied by Proclamation after a resolution passed at a meeting of landowners.

Game.—No. 8 consolidates and amends the laws relating to game. It repeals Law 16, 1891; Act 24, 1894; Act 4, 1904; and Zululand Proclamation 2, 1897. This Act makes provision for a close season, for the establishment of game reserves, and for the protection of certain game. The capture of game by means of traps and other methods set out in the Act is prohibited. The shooting of certain classes of game is altogether prohibited, and other classes of preserved game may only be shot under licence, on payment of a fee, and with strict limitations.

Customs.—No. 9 repeals Act 14, 1903. Provision is made for the entry of the Colony into a South African Customs Union. The general principle of the Union is the charging of uniform customs duties on goods imported from abroad, free importation of goods made or produced within the Union Colonies, and payment over by the Coast Colonies of the duties collected on goods imported for consumption in the Inland Colonies, with a certain deduction for expenses. The arrangements under the Union Convention are to be carried out by regulations under s. 20. The Act fixes the duties to be charged on goods, etc., imported or brought into the Colony, the *ad valorem* rate on goods not specially scheduled being 15 per cent.; rebates of duty granted on goods and articles, the growth, produce, or manufacture of the United Kingdom or a reciprocating British Colony. A duty is levied and imposed upon spirits, methylated spirits, and beer, made within the Union when imported into this Colony, equal to the Excise duty imposed when made in the Colony (*vide* Act No. 10, 1906). A rebate is allowed on spirits of wine made within the Union and imported into Natal solely for the use of chemists in the preparation of medicines, etc. The Act prohibits the importation of goods made in a prison or penitentiary, and opium, except for medicinal purposes.

Excise.—No. 10 repeals s. 11 of the Excise Act, 1901, and Act 34, 1903. This Act fixes the duty upon spirits made in the Colony at nine

shillings a gallon on proof spirits, and so on in proportion for any greater or less strength, but with a minimum duty of seven shillings and sixpence per imperial gallon.

Vehicles.—No. 11 amends Law 13, 1865. Provides that the name and address of the owner of every wagon, cart, or other vehicle used on any public road or street shall be affixed or painted thereon.

Witnesses (No. 12).—To compel the attendance, as witnesses, of persons residing in this Colony before the Courts of neighbouring States and Colonies.

Fugitive Offenders (No. 13).—The jurisdiction under Part I. of the Act of the Imperial Parliament known as the Fugitive Offenders Act, 1881, is to be exercised in Natal by Magistrates appointed under the Magistrates' Courts Act, 1896.

Franchise.—No. 14 confers electoral franchise within the Northern Territories upon certain persons who were enrolled in the Burgher Lists of the late South African Republic.

Liquor.—No. 15 extends ss. 5 and 6 of Act 31, 1905, with reference to liquor licences and other licences to the Province of Zululand.

No. 44 amends the Liquor Act of 1896 in regard to the punishments for supplying liquor to natives and Indians.

Railways (Nos. 16, 34, and 49).—These Acts authorise the construction of railways.

No. 20.—To continue the laws providing for the management and working of the Natal Government railways.

No. 50.—Under this Act the General Manager of Railways is empowered to grant running powers and rights of user over private railways. The Act gives Government the right to purchase and take over any private railway which is connected with the Natal Government railways.

No. 55 authorises the construction and working of a line of railway, and ratifies a contract between the Government and Gustave Henry Bonas, relative to the construction, maintenance, and working of the said railway, the supply of coal to the Government, and the establishment of iron and steel works in the district adjacent to the said railway.

Employers' Liability (No. 18).—This Act repeals s. 6 of the Act of 1896, and provides for notice of action within three months in the case of any injury.

Scab.—No. 19 amends the Scab Law, 1887. Under this Act the Governor may authorise the entry of sheep into this Colony from the other Colonies in South Africa without dipping.

Succession Duty.—No. 21 amends the Act of 1905. This Act provides that no succession duty shall be levied in respect of property situate in the United Kingdom of Great Britain and Ireland.

Vaccination.—No. 24 amends Law of 1882 and Law 10, 1885. The Act provides for compulsory vaccination, subject to a "conscience clause."

Special provisions are made in regard to Indians, and the vaccination of natives will be carried out according to regulations to be made by the Governor in Council.

Foreign Enlistment.—No. 26 extends the Foreign Enlistment Act, 1870, to Natal, including the Province of Zululand and the Northern Districts.

Prisoners.—No. 32 authorises Government to enter into contracts for the employment of prisoners undergoing imprisonment with hard labour.

Registration of Firms (No. 35).—This Act provides for the compulsory registration of every firm consisting of two or more persons carrying on business or having a place of business in Natal; registration is also necessary in the case of a business being carried on by any person under a firm name consisting of the name of any other person in addition to his own.

Militia.—No. 36 makes slight amendments to the Act of 1903 with regard to parades for the Reserves, and empowers the Governor to raise special Service Corps.

Insurance Companies.—No. 43 amends Act 47, 1904, with regard to the lodging of security by Assurance and Insurance Companies not having their head offices in Natal. Under the amendment an agent for any insurer not domiciled in Natal has to lodge security.

Royal Arms (No. 45).—This Act prohibits the unauthorised use of the Royal Arms and Government Badges and the like.

Indemnity (No. 51).—This Act indemnifies the Governor, the E cutive Council, Commandant of Militia, and all Military and Civil authorities of the Colony in regard to acts during the existence of Martial Law.

Miscellaneous Acts:

No. 17 empowers the Government to grant a licence to the Durban Corporation to extend the existing telephone system.

No. 23.—To enable the Government to acquire land for certain public purposes.

No. 25.—To enable the Vryheid Local Board to raise a loan for public works.

No. 27 amends the Municipal Corporations Law in so far as regards the Borough of Durban and grants extended powers to that borough.

No. 29 empowers the Greytown Local Board to raise a loan for certain public purposes.

No. 31.—For the control, conservation, and protection of Coast Fisheries.

Supply Acts:

No. 6.

No. 7.

No. 28.

3. ORANGE RIVER COLONY.

[*Contributed by* W. R. Bisschop, Esq., LL.D., *Lecturer on Roman-Dutch Law to the Council of Legal Education.*]

Ordinances (Lieutenant-Governor in Council)—Nos. 1 to 32 of 1906.
Private Ordinance—No. 1 of 1906.

Administration of Justice.—No. 1 makes further provisions for the administration of justice by giving resident magistrates the power for granting interdicts for arrests against persons and things, and for the attachment of money of a judgment debtor which is in the hands of third parties. It extends the jurisdiction of the resident magistrate under the Magistrates' Courts Ordinance, 1902, and under the Criminal Procedure Amendment Ordinance, No. 6 of 1905 (Journal, N.S., vol. vii., Part 2, p. 486), applies certain provisions of the Law of Evidence Ordinance, 1902, regarding the preliminary examination of witnesses and the admissibility of finger-prints and other records to prove previous conviction.

It fixes the procedure on the trial of a person who is committed by a magistrate for sentence under the terms of s. 4 of the Criminal Procedure Amendment Ordinance, 1905; gives the Courts discretion to discharge accused persons on recognisances and regulates the recognisances to keep the peace and be of good behaviour, as well as the process for levying the amount of a fine and the suspension of execution of imprisonment in default of payment of the fine and the payment of fines by instalment.

Every male inhabitant shall be required to assist in the arrest of a person if required to do so by an officer of the law.

Special power is given to the Lieutenant-Governor, after having declared by proclamation under the Prisoners' Detention Ordinance, No. 17 of 1904 (Journal, N.S., vol. vii., Part 1, p. 170), that a colony or territory in South Africa provides for the detention of offenders sentenced by a competent court of the Orange River Colony, to remove any person who is undergoing sentence of imprisonment in the Orange River Colony to any such colony or territory mentioned in the said proclamation, and any such person shall be deemed to be under lawful custody during the course of such removal.

No. 2 makes provisions to facilitate the recovery of certain petty debts, and repeals in that respect so much of the Magistrates' Courts Ordinance, 1902, as will be inconsistent with the provisions of this Ordinance. The procedure is set out which has to be followed concerning summonses for amounts under £10, and it is provided that the judge of the High Court may make general rules prescribing forms of summonses and other rules to be used in procedure under this Ordinance in any Court of resident magistrates.

Insolvency.—No. 3 sets out the conditions under which a deed or instrument made or entered into between the debtor and his creditors relating

to his release of debts and liabilities, or the distribution, inspection, management, winding up of his estate, shall be as valid and binding on all the creditors of the debtor as if they were parties to and had duly executed the same.

Certain particulars of such deeds shall be registered by the Master of the Court and advertised in the *Official Gazette*, and these items shall be open for inspection of all creditors.

The assignment of composition deeds between the debtor and his creditors shall be registered, and the Master shall call a meeting of creditors for the proof of their debts. These proofs may be given by affidavits; declarations are to be filed with the Master and may be inspected and copied by the other creditors, while any creditor whose debt exceeds £25 shall be entitled to summon the debtor in order that he may be examined. Provisions of the insolvency laws shall be extended to the parties to such deeds, and execution against debtors shall be stayed by the filing and registration of such deeds, while the petition of sequestration after the execution of such deed or instrument may be dismissed.

Special provisions are made regarding unknown creditors.

Authentication of Documents.—No. 4 provides that the judges of the High Court shall have power to make rules from time to time respecting the necessary requirements for the authentication of documents signed and executed outside the Orange River Colony, which may be produced and used in any Court of Justice or in any public office in the Orange River Colony.

Half Holidays.—No. 5 makes provisions to secure one half holiday per week for shop assistants, the closing day to be selected by the shopkeeper, but with the approval of the Lieutenant-Governor.

Asiatics.—No. 6 makes provisions to regulate and control the employment of coloured people to work within or beyond the borders of the Orange River Colony.

Telegraph and Telephone.—No. 7 abolishes Chapter LX. of the Law Book and Law No. 4 of 1899 and makes provisions for the consolidation and amending of the law relating to telegraphs and telephones. It provides that the construction, maintenance, and control of all telegraph wires shall be vested in the Government, but that the regulations for the establishment and management of telegraph offices and their work shall be made by the Lieutenant-Governor. It further contains provisions necessary for the management of the telegraph department and the duties of the Postmaster-General and his subordinates and penalties against interferences with the proper exercise of these duties on the part of the public or the civil servants.

Provisions are made for the erection of telegraph poles and telegraph wires and the compensation of possible damage caused thereby.

The prosecution of any offence shall lie with the Postmaster-General and the jurisdiction with the Courts of the resident magistrates.

Administration of Estates.—No. 8 amends in certain respects the

Administration of Estates Ordinance, No. 13 of 1905 (Journal, N.S., vol. vii., Part 2, p. 489).

Pass Law.—No. 9 amends in certain respects Chapter CXXXIII. of the Law Book and the Laws No. 4 of 1895 and No. 8 of 1899 with regard to passes issued within the Orange River Colony to coloured persons.

No. 30 amends in certain respects the Pass Law Amendment Ordinance, No. 9 of 1906, and supplements that Ordinance by certain new provisions.

Irrigation.—No. 10 makes provisions for the carrying out of irrigation schemes and affords greater facilities to persons having a right to water to convey the same across the lands of other persons.

Any person having a legal right to any water in any stream or river or derived from any spring, dam, or reservoir shall be entitled in every case in which such right is necessary to enable him to use the water for irrigation purposes or hydraulic works or for useful works to claim the right temporarily or in perpetuity to convey water from or over land belonging to or in the occupation of any other person upon payment of compensation.

Notice to acquire such rights must be given to the owner of the property over which the water will have to be conveyed, and in case these two persons cannot agree as to the details of such conveyance or the sum to be paid for compensation, these matters shall be settled by arbitration in the manner provided by the Expropriation of Lands and Arbitration Clauses Ordinance, No. 11 of 1905 (Journal, N.S., vol. vii., Part 2, p. 488). The duties of such arbitrators are set out.

Special provisions are made for making mortgagees parties to the arbitration; for the costs of the works to be constructed and the mode and the person by whom they shall be constructed; for the manner in which the channel shall be kept clean and in repair; and the measures to be taken to secure free passage over the property.

All servitudes created shall be registered on the title-deeds and shall involve the right of everything necessary to their use, including the right to clean and repair.

National Hospital.—No. 11 repeals Law No. 2 of 1899 and provides rules for the management and control of the National Hospital.

Transfer Duties.—No. 12 repeals Chapter LXVII. of the Law Book, the Transfer Amendment Duties Ordinance of 1903, and amends and consolidates the laws relating to transfer duties.

Lunacy.—No. 13 repeals Law No. 4 of 1893 and makes provisions regulating and adding to the law relating to lunatics.

Part I. makes provisions relating to lunatics who are neither kept at the Lieutenant-Governor's pleasure nor are criminal lunatics. These provisions relate to: (1) lunatics who are apprehended by the magistrate after having been found wandering at large and deemed to be lunatics—of these the Attorney-General shall be ex officio *curator ad litem*; (2) the power of husbands, wives, friends, or relatives of persons deemed to be

lunatics to apply direct to the Court or a judge for an inquiry as to the mental condition of such person; (3) the right of any person detained to apply under a Summary Jurisdiction Order to the Court for inquiry.

Part II. contains provisions relating to lunatics who are detained at the Lieutenant-Governor's pleasure and criminal lunatics, their custody, their examination, and their ceasing to be criminal lunatics.

Part III. contains provisions for the account and administration of lunatics' property during their detention and after their death.

Part IV. provides for penalties against certain offences in connection with the provisions of this Ordinance.

Part V. contains general provisions regarding lunatics from neighbouring colonies, the detention of persons in asylums or in private houses, the necessity of their being visited by an independent medical practitioner, the maintenance of insane persons residing or being taken charge of in private dwelling-houses and the care to be bestowed upon such lunatics. Further provisions regard the re-capture of escaped lunatics, the cost of their maintenance in asylums or elsewhere, actions brought by lunatics, the appointment of visitors, and the powers of the Asylums Board.

Customs.—No. 14 ratifies the Customs Union Convention, which is set out in full as an appendix to the Ordinance, and amends the provisions of the Customs Consolidation Ordinance No. 34 of 1903 (Journal, N.S., vol. vi., Part 2, p. 405).

Excise and Import Duties.—No. 29 repeals Laws No. 18 of 1897, No. 19 of 1898, No. 13 of 1899, Ordinance No. 14 of 1902, and Ordinance No. 23 of 1903, and amends in certain respects the Liquor Licensing Ordinance No. 8 of 1903 (Journal, N.S., vol. vi., Part 2, p. 402), and consolidates the law relating to import duty on intoxicating liquors.

Licences.—No. 28 provides for the sale of beer by brewers in retail quantities by bottle.

Local Loans.—No. 15 provides certain amendments in the terms of the Local Loans Ordinance No. 9 of 1904 (Journal, N.S., vol. vii., Part 1, p. 172).

Loans.—No. 17 declares the terms and conditions applicable to loans authorised to be raised by the Government of the Orange River Colony, and provides for the creation of the Orange River Colony Inscribed Stock.

Trust Securities.—No. 20 makes provisions to facilitate the investment of trust and other funds in the United Kingdom in Orange River Colony Government Securities, in connection with the Colonial Stock Act, 1900, which provides that the securities in which a trustee may invest under the powers of the Trustee Act, 1893, should include any colonial stock which was registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts.

Finance.—No. 21 authorises the Lieutenant-Governor to borrow the sum of £400,000 to construct a railway from Bloemfontein to Kimberley.

No. 23 applies the sum of £30,437 for the service of the year ending June 30, 1906.

No. 24 applies the sum of £660,239 for the service of the year ending June 30, 1907.

No. 25 provides the sum of £283,000 out of Treasury balance for extraordinary expenditure on certain works, loans, and other services.

Mining of Precious Stones.—No. 16 amends in certain respects the Mining of Precious Stones Ordinance No. 3 of 1904 (Journal, N.S. vol. vii. Part 1, pp. 172-4).

Foreign Enlistment Act.—No. 19 applies the provisions of the Foreign Enlistment Act, 1870, to the Orange River Colony.

Cattle Diseases.—No. 22 amends the Ordinance No. 13 of 1903 (Journal, N.S., vol. vi., Part 2, p. 404) for the purpose of preventing more effectually the spread of infectious and contagious diseases amongst cattle and other animals.

To the list contained in Ordinance No. 13 of 1903, eight more diseases of animals are added to be provided for. Further amendments regard the procedure in case of infectious animals and the action by the resident magistrates in case of infection.

Scab.—No. 26 amends in certain respects the Scab Ordinance No. 14 of 1903 (Journal, N.S., vol. vi., Part 2, p. 404), and Amending Scab Ordinance No. 12 of 1905 (Journal, N.S., vol. vii., Part 2, p. 488), relating to sheep and goats.

Interpretation of Laws.—No. 27 provides for the Repeal of Laws Ordinance, 1902, and the Revision of Laws Ordinance, 1904, and declares the number of laws set out in Schedule A in this Ordinance to be of no force or effect in the Orange River Colony. It further corrects, to the extent mentioned in Schedule B, the laws set out in that schedule.

Land Settlement.—No. 31 further amends the Land Settlement Ordinance No. 22 of 1902 (Journal, N.S., vol. v., Part 2, p. 385).

Sale of Food and Drugs.—No. 32 regulates the sale of food and drugs.

Private Ordinance.

Massisi Estate.—No. 1 guarantees certain powers to the executors of the Massisi Estate.

4. TRANSVAAL.

[*Contributed by* W. R. Bisschop, Esq., LL.D., *Lecturer on Roman-Dutch Law to the Council of Legal Education.*]

Ordinances (Lieutenant-Governor in Council)—Nos. 1 to 31.
Private Ordinances 1 and 2.

Foreign Enlistment.—No. 1 applies the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), to the Transvaal.

Administration of Justice.—No. 2 provides for the obtaining of evidence of persons residing in the Transvaal by Courts of Law in neighbouring Colonies and Territories. See Ordinance No. 15 of 1905 O.R.C. (Journal, N.S., vol. vii., Part 2, p. 487). Part I. regards the serving of subpœnas on witnesses residing in the Transvaal for their attendance in the Courts of Law of neighbouring States.[1]

Part II. regards the examination by interrogatories of persons residing in the Transvaal whose evidence is required in civil cases in Magistrates' Courts in neighbouring Colonies.[2]

Gaols.—No. 6 repeals Ordinance No. 10 of 1904 (Journal, N.S., vol. vii., Part 2, p. 177), and partially a number of other Laws. It consolidates and amends afresh the Law relating to convict prisons and gaols and provides for the establishment of reformatories for the reception and custody of juvenile offenders.

Police.—No. 10 provides a number of amendments in the Police Regulation Proclamation No. 15 of 1901.

Export Duty.—No. 3 imposes a duty on the export of Angora rams and ewes from the Transvaal.[3]

Customs.—No. 4 amends the customs laws and customs tariff in certain respects, allowing a rebate of portion of the duties on articles imported which are the growth, produce, or manufacture of the United Kingdom or of other British Colonies which grant reciprocal treatment.

Special provisions are inserted to allow the distillation of spirit from the produce of the vine, and the Lieutenant-Governor obtains authority to

[1] This part was declared to take effect with regard to Cape Colony, Orange River Colony, and Bechuanaland Protectorate by Proclamation No. 57 of 1906, *Gazette*, July 6, 1906; with regard to Basutoland by Proclamation No. 85 of 1906, *Gazette*, September 28, 1906, and with regard to Natal by Proclamation No. 102 of 1906, *Gazette*, November 8, 1906.

[2] This part was declared to take effect with regard to Cape Colony, Natal, Orange River Colony, Southern Rhodesia, and Bechuanaland Protectorate by Proclamation No. 70 of 1906, *Gazette* of August 31, 1906.

[3] Proclamation No. 104 of 1906, *Gazette* of November 16, 1906, exempts from duty the Angora rams and ewes which are exported to the Cape Colony, because the Cape Colony has itself provided for the imposition of such duty on sheep exported from that Colony.

suspend certain duties and to make regulations on certain points. The Customs Union Tariff is added in a schedule to the Ordinance.

Opium.—No. 25 repeals the Opium Importation Ordinance No. 36 of 1905 (Journal, N.S., vol. vii., Part 2, p. 497), and sub-sections 15 and 16 of s. 31 of the Labour Importation Ordinance No. 17 of 1904 (Journal, N.S., vol. vii., Part 1, p. 177) as amended by s. 8 of the Labour Importation Ordinance No. 7 of 1905 (Journal, N.S., vol. vii., Part 2, p. 496), and regulates afresh the importation of opium into the Transvaal.

The importation of opium is prohibited under penalties of fine and imprisonment to any one but chemists and druggists who have obtained a permit. Persons lawfully entitled to sell opium shall make returns of the quantity in stock at the date when the Ordinance comes into operation. Conditions are provided for the purchase of opium from importers by medical practitioners and chemists, and all those importers, purchasers, and sellers shall keep books containing records of the quantities of opium, the date of its importation, the person from whom, and the place from which, it is imported, and the quantity disposed of. These books shall be open for the inspection of the Secretary of the Pharmacy Board, or of any police officer of or above the rank of inspector.

Special provisions are made that no opium shall be sold except on the production of a permit, while powers are given to the police for the entrance and search of premises where it is reasonably suspected that opium is kept in contravention of the Ordinance. Provisions are set out for the evidence which it will be necessary to produce and the procedure to be followed.

Epidemic Diseases.—No. 7 amends part of the Epidemic Diseases and Hospital Committees Ordinance, 1905.

Infectious and Contagious Diseases.—No. 9 establishes a provisional Joint Committee for the Witwatersrand district for the purpose of establishing and managing hospitals for dealing with infectious and contagious diseases and for improving and maintaining the main reef road. The Committee absorbs the Johannesburg Hospital Committee, which was appointed under s. 4 of the Epidemic Diseases and Hospitals Committees Ordinance, 1905, and the Rand Plague Committee constituted by Government Notice No. 420 of 1904, and takes over all their rights and liabilities. The Committee shall have authority to establish dispensaries for the use of the poorer inhabitants, to make provisions for the nursing of sick persons in their own homes, to provide mortuaries, disinfecting stations, ambulances; to regulate the admission to hospitals, the charges for treatment there, the establishment of free wards; to make regulations regarding infectious diseases, and in general to have all the powers required for carrying out these duties. For that purpose the Committee may enter into contracts and take legal proceedings.

Special powers are given to the Committee for making provisions as

to the repairing, constructing, and altering of the main reef road mentioned in the Local Authorities Roads Ordinance No. 44 of 1904 (Journal, N.S., vol. vii., Part 1, p. 180).

In the second schedule a sum of £73,000 is set apart for the construction of hospitals and the acquisition of sites therefor.

Fish.—No. 5 repeals the Fish Preservation Ordinance No. 15 of 1904 (Journal, N.S., vol. vii., Part 1, p. 179), and makes new provisions for the protection of fish in the Transvaal.

Liquor Licences.—No. 8 further amends the law relating to the sale of intoxicating liquor. See the Liquor Licensing Ordinance No. 32 of 1902 (Journal, N.S., vol. v., Part 2, p. 396.

Mining.—No. 11 provides an amendment of s. 1 of the Mining Certificates Ordinance No. 50 of 1903 (Journal, N.S., vol. vi., Part 2, p. 413).

No. 23 amends the Mines Works Machinery Ordinance No. 31 of 1905 (Journal, N.S., vol. vii., Part 2, p. 496).

Natives.—No. 20 amends the law relating to the taxation of natives as laid down in the Native Taxation Ordinance No. 20 of 1902 (Journal, N.S., vol. v., Part 2, p. 392), by reducing the consolidated tax of £2 in the case of either farm labourer or municipal location resident to £1, and some further amendments.

Asiatics.—No. 29 repeals Act No. 3 of 1885 as afterwards amended, and provides new regulations for the residence of Asiatics in the Transvaal. All such Asiatics, lawfully resident in the Transvaal, shall be registered, and must apply for such registration before January 1, 1907. The Registrar shall have to register all applications for registration if approved of, and, in case of refusal, give notice thereof. Guardians are obliged to give particulars and to apply for registration of their wards; and, if they fail to supply such particulars, the wards themselves shall, on attaining the age of sixteen years, have to apply for registration. Evidence of registration shall be supplied by a certificate issued by the Registrar, and this certificate shall have to be produced on demand by the bearer thereof. Trading licenses shall not be granted to Asiatics except on the production of these certificates. Further provisions are made with regard to lost or destroyed certificates, to the exemption from stamp duty of affidavits or sworn declarations which may be required by Regulation; and also with regard to the offences relating to applications for registration and to registration certificates. Also provisions are made for Asiatics under contract for service and regarding the capacity of Asiatics to hold fixed property. Powers are given to the Lieutenant-Governor from time to time to alter or repeal special regulations for the purposes set out in the Ordinance.[1]

Unskilled non-European Labourers.—No. 12 further amends the Labour

[1] This Ordinance did not take effect until 1907, the taking effect having been postponed until it would have been notified that His Majesty had been pleased not to disallow the same.

Importation Ordinance No. 17 of 1904 (Journal, N.S., vol. vii., Part 1, p. 177) and the Labour Importation Amendment Ordinance No. 17 of 1905 (Journal, N.S., vol. vii., Part 2, p. 496).

Crown Lands.—No. 13 amends the Crown Land Disposal Ordinance No. 57 of 1903 (Journal, N.S., vol. vi., Part 2, p. 414).

Finance.—No. 14 applies a sum of £868 15*s.* 7*d.* for the service of the year ended June 30, 1905, applied to Labour Importation.

No. 15 applies a sum of £79,648 for the service of the year ended June 30, 1906.

No. 16 applies a sum of £3,761 13*s.* 2*d.* for the service of the year ending June 30, 1907.

No. 17 provides £605,000 out of the balances in the hands of the Colonial Treasurer on June 30, 1906, for the construction of certain works and other purposes set out in the schedule to the Ordinance.

No. 18 provides £377,913 out of the balances in the hands of the Colonial Treasurer on June 30, 1905, for the construction of certain works and other purposes set out in the schedule to the Ordinance.

No. 27 applies a sum of £31,150 for the service of the year ended June 30, 1907, in addition to the sum mentioned in the Appropriation Ordinance No. 16 of 1906.

Rates.—No. 22 amends the Local Authorities Rating Ordinance No. 45 of 1904 (Journal, N.S., vol. vii., Part 1, p. 181).

Revenue.—No. 28 repeals Law No. 1 of 1885 and first Volksraad Resolution, Article 112, dated May 16, 1903, and s. 7 of Proclamation (Transvaal) No. 12 of 1902, and substitutes new provisions therefor.

Registration.—No. 19 provides for the proper registration of births and deaths within the Transvaal, and establishes a central registration office for births, marriages, and deaths, at the same time repealing Proclamation No. 17 of 1900.

A Registrar-General, District Registrars, and Assistant District Registrars of Births and Deaths shall be appointed by the Lieutenant-Governor, who, at the same time, will make regulations for the purposes of this Ordinance. These officers shall have to keep registration books and inform themselves of births and deaths occurring in their districts. Registration must take place within two years of the birth or death of a person, and provisions are made for the registration of children to whom no name is given, or whose name is altered, of illegitimate children, of bodies of new-born children found exposed; as well as provisions for the information to be forwarded by persons holding inquests, of custodians of burial places, and of undertakers.

The second part of the Ordinance applies to registration within areas which are defined as Urban areas. The duties are set out of different persons who have to notify the birth or the death of a person, and of those to whom the burial of deceased persons is entrusted.

Part III. regards the districts and areas other than the Urban areas.

Part IV. contains miscellaneous provisions regarding the power of the Lieutenant-Governor to prescribe special provisions as to the births and deaths of natives; penalties for losing or injuring registers; provisions for the removal of bodies or remains of bodies which have been buried, and for the burial of persons within the Transvaal who have died outside the Transvaal.

Rand Water Board.—No. 21 further amends the Rand Water Board Extended Powers Ordinance No. 48 of 1904 (Journal, N.S., vol. vii., Part 1, p. 181).

Municipal Councils.—No. 24 further amends the Municipal Elections Ordinance No. 38 of 1903 (Journal, N.S., vol. vi., Part 2, p. 409), by rendering it unnecessary for the Council to make voters' roll oftener than triennially, and giving them power to add to voters' roll on application.

Municipal Corporations.—No. 26 further amends the Law relating to Municipal Corporations, by substituting several new clauses in the Municipal Corporations Ordinance No. 58 of 1903 (Journal, N.S., vol. vi., Part 2, p. 409), and No. 41 of 1904 (Journal, N.S., vol. vii., Part 1, p. 180), and specially provides for the contravention of the byelaws or regulations by a company, firm, or partnership; for the validation of agreements entered into by the Council of the Germiston and Boksburg Municipalities relative to bonds, native elections, and Asiatic bazaars; for the issue of long leases by the Council for Asiatic bazaars and native locations, and for the conduct of councillors who are either acting for the Council in professional capacity or are interested in contracts with the Council.

In the schedules to this Ordinance the agreements are set out which are sanctioned by it.

Johannesburg.—No. 31 transfers certain stands in the Township of Vrededorp to the Council of the Municipality of Johannesburg on certain conditions.

Civil Service.—No. 30 regulates the retiring pensions of those officers of the public service of the Transvaal who have been transferred thereto from other services with pensionable rights.

Pensions may be paid on superannuation of such officers, on their invalidation, and for extraordinary causes. The age for retirement is fixed at fifty-five years, and special conditions are set out for the grant of invalid and extraordinary pensions. The Lieutenant-Governor has powers to compel a pensionable officer to retire on incapacity. The payment of pensions to the widows or minor children of pensionable officers is left to the discretion of the Lieutenant-Governor, while persons dismissed or voluntarily retiring from the service before the prescribed age are not entitled to pensions. Pensions shall be paid out of the Colony's revenue.

The second part of the Ordinance deals with the suspension and reduction of pensions, the recall of pensioned officers to service, the com-

mutation of small pensions, the impossibility of assigning pensions or of seizing them on behalf of creditors. The pension ceases on conviction and on insolvency.

Private Ordinances.

Pretoria.—No. 1 of the Private Ordinances confers further powers on the Council of the Municipality of Pretoria, and shall be read as one with the Pretoria Municipal Proclamation No. 7 of 1902 and the Pretoria Municipal Proclamation Amendment Ordinance No. 31 of 1902 (Journal, N.S., vol. v., Part 2, p. 393) and the Pretoria Municipality Extended Powers Ordinance No. 50 of 1904 (Journal, N.S., vol. vii., Part 1, p. 181). These Ordinances may be cited together as the Pretoria Municipal Statutes, 1902-1906.

Johannesburg.—No. 2 of the Private Ordinances consolidates and establishes certain laws relating to the Municipality of Johannesburg, and repeals the Johannesburg Municipal Proclamation No. 16 of 1901, the Proclamation (Transvaal) No. 29 of 1901, the Ordinance No. 41 of 1902 (Journal, N.S., vol. v., Part 2, p. 393), the Johannesburg Municipal Ordinance No. 4 (private) of 1904 (Journal, N.S., vol. vii., Part 1, p. 181). It also repeals certain sections of the Johannesburg Municipality Amendment Proclamation No. 39 of 1902, the Johannesburg Municipality Further Powers Ordinance No. 62 of 1903 (Journal, N.S., vol. vi., Part 2, p. 410), and the Johannesburg Ordinance No. 2 (private) of 1905.

5. SOUTHERN RHODESIA.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—16.

Customs Protection (No. 1).—This Ordinance empowers an officer of Customs to demand a bond from importers on notice being given of a proposal to increase Customs duty.

Post-Office (No. 2).—Regulations may be made by the Administrator for the insurance of letters, parcels, and packets forwarded through the post, and for the extension of the system to other countries.

Post-Office Savings Banks (No. 3).—This enlarges the power of investment of money in Post-Office Savings Banks by allowing them to be placed on deposit for fixed periods in one or more of the banks now carrying on business in Southern Rhodesia.

Native Reserves (No. 4).—The Administrator is empowered to establish Native Reserve Locations, in which natives may be required to reside. An exception is made in favour of natives in *bonâ fide* employment as domestic or other servants. Every native occupying a dwelling in the location is

to pay for it such rent as the Administrator may fix, on pain of ejectment for default. Headmen may be appointed for a location and regulations made as to buildings, ventilation and lighting, hospitals, schools, nuisances, animals, shops, passes, and other matters. No licences to be issued for the sale of intoxicating liquors in the location, nor is any intoxicating liquor to be brought into the location without a permit in writing from the Location Inspector.

Administration of Estates (No. 5).—This Ordinance amends the law, *inter alia*, by enlarging the power of a Master as to private sale, sub-division of minors' unmovable property and investments.

Customs.—No. 6 amends the law relating to the collection and management of Customs duties. Any goods imported without payment or security for the duties are to be liable to forfeiture.

Goods bearing a false trade mark, counterfeit coin, obscene prints or photographs, are prohibited entering. Waggons containing imports are to follow prescribed routes.

Smuggling is made punishable with a penalty of £100. Large powers of search are given to the Customs officers. Any such officer taking a gratuity is to be liable to dismissal.

Railways (No. 7).—Persons travelling without a ticket, or in a superior class of carriage to what their ticket entitles them, or beyond the distance, are to be liable to pay the fare or difference, plus a booking fee, or be summarily removed. They may also be prosecuted, and, if convicted, be liable to a penalty of £2, or, in default of payment, imprisonment.

Transferring or falsifying tickets is also made punishable.

Regulations may be made by the Administrator prohibiting the throwing of stones, bottles, etc., from trains.

Natives' Passes (No. 8).—Natives found wandering without a pass beyond the limits of their districts, or deviating from the pass route, may be apprehended and brought before the nearest magistrate.

Employers must call for a native's pass and certificate of registration, and endorse the certificate with the terms of employment, and on discharge with the date of the discharge.

A native who has lost his certificate may obtain a new one.

Transfer Duty.—No. 9 reduces the duty on transfer of property from 4 to 2 per cent. on the purchase price.

Supply (No. 10).

Coloured Labourers (No. 11).—"Coloured labourers" means an aboriginal inhabitant of Africa south of the equator, and includes half-castes and their descendants by natives. Where such coloured labour constitutes 25 per cent. of the labour employed on a mine a fee of 1*s.* per head per month must be paid by the employer to the British South Africa Company. The sum so received is to be paid to the Rhodesian Native Bureau, to be used by the Bureau for collecting and distributing labourers.

South African Customs Union Convention.—No. 12 ratifies the above Convention and imposes the tariff thereby agreed on.

Game Preservation (No. 13).—"Game" in this Ordinance includes three classes: (*a*) birds (bustards, pheasants, partridge, grouse, etc.); (*b*) antelopes (hartebeest, waterbuck, gnu, etc.); (*c*) royal or big game (elephants, giraffes, hippopotamuses, rhinoceroses, ostriches, etc.).

Licences are to be taken out annually, and no person is to kill or hunt game without a licence. An ordinary licence is not to entitle the holder to kill any "big" game. A permission in writing for this purpose must be given by the Administrator.

The Administrator may also by notice protect any game in classes (*a*) and (*b*) from being hunted or destroyed for a period of five years. The cost of a licence to persons domiciled in Rhodesia is £5; to persons not so domiciled, £25. Occupiers may shoot big game if found destroying crops.

Eggs and the young of any "game" are likewise protected.

Mines.—No. 14 makes small amendments in the Mines and Minerals Ordnance, 1903.

Stamps (No. 15).—Shipping agents are to take out yearly licences. The cost of a licence is £10.

Precious Stones (No. 16).—No person is to prospect or dig for precious stones without a permit—to be registered—from the British South Africa Company.

Every digger is, once a month, to make a return to the Mining Commissioner of the weight and value of the precious stones found by him.

"Salting" or depositing precious stones in any place with intent to mislead is punishable as fraud.

A digger who has under a permit pegged out his claim is, within thirty-one days, to register the same and to receive a certificate; 2*s.* 6*d.* per month is payable for each claim.

A digger may transfer or hypothecate his claim.

No person is to deal in diamonds unless licensed, and is then to deal only with authorised persons.

No diamonds are to be imported except through one of the duly declared ports of entry. Postal packets suspected of being sent by a person without a licence to deal in diamonds may be examined, and the contents, if found to be so sent, forfeited and sold.

VI. WEST AFRICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. GAMBIA.

Ordinances passed—15.

Tariff.—Changes are made in the tariff by two Ordinances. No. 1 raises the duty on kolas from 2*d.* to 3*d.* per lb., and that on unmanufactured tobacco from 3*d.* to 4*d.* per lb.; No. 2 takes away the exemption from duties hitherto enjoyed by the Governor.

Slavery.—An important Ordinance deals with the question of slavery in the Protectorate. The necessity for a gradual extinction of slavery in the outlying territories of the Empire is a principal, though not the sole *raison d'être* of the Protectorate system. A law of 1894, which is now repealed, went far towards abolition: the present law goes the whole way, except that it spares the existing relations of master and slave within the Protectorate *inter vivos*. Thus, all manner of slave-dealing is prohibited, under penalty of seven years' hard labour. A slave brought into the Protectorate is to be liberated, a contingency whereof neighbouring chiefs and traders paying visits within the British territory must take note. All persons born after the commencement of the Ordinance are free, and all slaves are free at the death of their masters.

2. SIERRA LEONE.

Ordinances passed—35.

Companies.—This Colony does not seem to have had any law relating to Joint Stock Companies before 1906. It is now content, by Ordinance No. 3, to adopt *en bloc* the whole of the English Acts, with all Rules and Regulations, "so far as the same are applicable to the circumstances of the Colony." Every Imperial Statute, Rule, or Regulation so brought into force "shall be construed with such verbal alteration to suit local circumstances as to the Supreme Court shall seem expedient." It may be noted that while this Ordinance was under consideration, the neighbouring Gold Coast Colony was passing an apparently well-considered law on the whole subject.

Sunday Loading.—The loading and discharge of cargo on Sundays is prohibited: but in the case of steamships which have used all reasonable hours on the Saturday for the purpose a permit may be granted by the Collector of Customs to complete on Sunday morning between 6.30 and 8.30.

Consolidation Laws.—Useful measures of consolidation have been passed with respect to Courts of Bequests (No. 18), Summary Conviction Offences (No. 20), Christian Marriages (No. 22), Interpretation (No. 25).

Land Concessions.—A native chief is restrained from alienating any land, except with the consent of the Governor, and such consent must not be given (1) where the extent is less than 1,000 acres, unless the Governor is satisfied that it is for the benefit of the chiefdom; (2) where the extent is over 1,000 acres, unless he is satisfied that it is for the benefit of the whole country, and that the tribal administration will not be injuriously affected; (3) when it exceeds 5,000 acres, without the consent of the Secretary of State. Any conditions imposed upon grants by the Governor may be added to by the Legislature.

Real Estate.—Ordinance No. 30 subjects real estate to liability for payment of debts.

Communal Labour.—The liability of the individual to contribute by his own labour to works of communal benefit, which is widely recognised in the East, seems to be an accepted doctrine also in West Africa. Such a law as the Headmen's Ordinance, 1906 (No. 31), is probably founded on custom. It authorises the headman of a town to call out the labour of the able-bodied males for cleansing of cemeteries, repair and maintenance of roads and bridges, and such like works. The limits of age are fifteen and sixty, and any person may commute. The Government, in addition, concedes for the purposes of these works a fourth of the House Tax collected in the town.

Land.—Two Ordinances deal with Crown lands. No. 32 provides for an inquiry by the Supreme Court into claims and applications for lands. No. 33 provides a summary procedure for the ejectment of squatters on Crown land.

Customs.—The exemption from duties hitherto enjoyed by the Governor is removed (No. 34), as at the Gambia (*v. s.*).

3. GOLD COAST.

(i) COLONY.

Ordinances passed—18.

Savings Banks.—A very useful Ordinance (No. 1) enables the Postmaster-General to make arrangements for the transfer of deposits from the savings bank of the Colony to similar banks in the United Kingdom or a British Colony, and *vice versâ*.

Volunteer Force.—A new Volunteer Ordinance (No. 8) is passed, superseding that of 1884. The force is not to be employed outside the Colony and Ashanti, and is to be used only for repelling invasion and in the maintenance of order. The corps in the Colony number over 1,000 men.

Civil Process Extension.—The Ordinance (No. 9), which provides for the mutual service and execution of Gold Coast and Ashanti process, is one of many provisional laws which will disappear when Ashanti and the

Northern Territories are amalgamated with the Colony. It may be noted in this connection that all caravan tolls are now abolished between the Colony and Ashanti, so that, so far as trade is concerned, the amalgamation is already attained.

Company Law.—Provisions for the incorporation, regulation, and winding-up of Trading Companies are enacted in a compendious Ordinance (No. 14) of 166 sections, which follows in its main lines the course of United Kingdom legislation.

Another law (No. 18), entitled "The Foreign Companies' Preferential Creditors Ordinance, 1906," enacts that certain local debts of foreign companies carrying on business in the Colony are to be preferred to any debentures or similar charges created by the company. When a company is in a doubtful financial position, evidenced by well-recognised symptoms, the Court may appoint a receiver, who may proceed to a sale of so much of the property as shall be sufficient to meet the local claims. The local debts so preferred are (i) rates and taxes under the Town Councils' Ordinance, 1894, having become due within one year before the appointment of the receiver; (ii) wages of any clerk or servant for the four months preceding the appointment; (iii) wages of any workman not exceeding £25 for the two months preceding.

(ii) NORTHERN TERRITORIES.

Ordinances passed—6.

These Ordinances comprise a provision of Customs Law (No. 2), requiring that no goods other than West African produce are to be introduced into the territories except through Ashanti, or at such places as may be approved by the Governor, and (No. 3) an extradition law of normal character.

(iii) ASHANTI.

Ordinances passed—8.

Foreign Enlistment.—The Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), is applied to Ashanti as if it were a British possession acquired before the date of the Act.

Civil Process Extension.—Ordinance No. 5 contains provisions corresponding to those of the Gold Coast Ordinance noticed above.

River-dredging.—By the Ordinance of 1903 the fee for a licence to dredge rivers for minerals and precious stones was fixed at £30. This appears to have been prohibitive, and is now reduced to £5.

4. NORTHERN NIGERIA.

Proclamations passed—25.

Native Courts.—The ancient judiciary system is being preserved as far as possible. Criminal and civil cases in which natives are concerned are to be tried before a Native Court, either an Alkali's Court or a Judicial Council, presided over by an Emir. The Alkali has, as assessors or co-judges, persons described as Mallams and Almajiraï. The Emir likewise has chiefs and district headmen. These judges and assessors are appointed by the Resident of the Province.

The law to be administered is native law, subject to provision against cruel punishments.

The Resident may appoint the Alkali's Court or Judicial Council at the headquarters of his Province to be a Court of Appeal from all the other Native Courts in the Province.

The Ordinance is not clear as to the limits of jurisdiction of the two classes of Courts.

Land Revenue.—The provisional law of 1904 (*see* Journal, N.S. No. xv. p. 186) is superseded by No. 2 of 1906. A distinction is drawn between the "tribute" exacted from a community in an "unsettled" district and the "taxes" levied on individuals in settled districts. Both are assessed by the Resident. In making this assessment he has to compute (*a*) the annual value of the lands and produce on which tribute and taxes have been paid under native custom to any chief, (*b*) the annual value of the profits or gains from any trade, manufacture, or employment, (*c*) the value of the flocks and herds of nomad herdsmen, and (*d*) the value of such sources of income as are liable under native custom to Gaisua, or Sovereignty tax.

The taxes are in fact collected by village headmen, under the supervision of the district headman, to whom they are paid over. The village headman is entitled to such portion of his collection, not exceeding one-fifth, as the Resident may allow. The district headman takes such sum, not exceeding one-fourth, of what is handed to him, as the Resident may allow.

The district headman pays over the residue of the taxes collected to the recognised chief, and the latter takes half of the Kurdin, a land tax, and half the Jangali, a cattle tax, paying over the residue of these taxes and the whole of the Gaisua or Sovereignty tax to the Resident. A portion of the Gaisua tax may be assigned to religious purposes.

Forestry.—A licence is required for the collection of rubber, or for cutting the trees named in a schedule, which includes oil and date palms, ebony, rubber, tamarind, rosewood, and mahogany (No. 6). The High Commissioner may create reserves for forestry operations, and no person may acquire any forest right from a native, unless the grant is approved by the High Commissioner.

Poisons.—A law of a simple character (No. 20) provides penalties for selling, making, etc. any poison for an illegal purpose. A person found in possession of any poison is presumed to have it for an illegal purpose unless the contrary is shown; special penalties are fixed for the possession of poisoned arrows or other weapons.

5. SOUTHERN NIGERIA.

(i) COLONY.

Ordinances passed—18.

[It has to be recorded here that since May 1, 1906, the name Lagos disappears from the list of British Colonies. The fusion, long designed, of Lagos and Southern Nigeria was effected by Letters Patent of February 28, ordering that the Colony of Lagos should after May 1 be known as the Colony of Southern Nigeria; and by an Order in Council of February 16, which directed that the Lagos and Southern Nigeria Protectorates should together be known as the Protectorate of Southern Nigeria. There is thus no addition to the King's dominions; the whole of the two remains a Protectorate.]

Transfer of Prisoners.—Power is taken to transfer prisoners from any one prison to another, whether in the Colony or the Protectorate.

Public Officers' Guarantee Fund.—Officers employed in revenue duties who may be required to give security are obliged to contribute to a fund 1 per cent. of the amount for which security has to be given. If the security required exceeds £500, the officer must give it for the excess. An acting officer must pay one-twelfth of 1 per cent. every month.

(ii) PROTECTORATE.

Proclamations passed—11.

Crown Lands.—All lands of the Niger Company, other than those which have been duly registered under the Lands Registry Regulation, 1896, are vested in the High Commissioner (now the Governor) and his successor. The registered lands are described in a schedule, and these remain in the hands of the Company, subject to the terms of the several conveyances.

Native Courts.—The legislation respecting Native Courts begun by the law of 1901 (*see* Journal, N.S. No. x. p. 307) and since amended, is further developed and consolidated by Proclamation No. 7. The jurisdiction of Minor Courts in civil cases is raised to £25. In the present circumstances of the Protectorate we are still a long way from the separation of judicial from administrative functions. Thus we find that the Native Council is authorized to make rules not only with respect to Native Law, but also "regulating and promoting trade in its district." The chief members of

each Native Court are still the Divisional Commissioner and the Travelling Commissioner. A curious section is one which provides a penalty of £50 fine, or imprisonment for six months, in case of any person sitting with any Native Court or taking part in its proceedings, unless he is so authorized by the High Commissioner.

Marriage Law.—The Marriage Law heretofore comprised in four enactments commencing with 1900 is consolidated and amended by No. 10. The law is now in the form usually adopted in Crown Colonies for civil marriage. A vexed question is summarily disposed of as follows: "A marriage may be lawfully celebrated under this Proclamation between a man and the sister or niece of his deceased wife."

VII. EAST AND CENTRAL AFRICA

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. EAST AFRICA.

Ordinances passed—23.

Notaries.—Licences to practise as notaries may be granted only to persons who are either barristers or solicitors of England or Ireland, or Writers to the Signet in Scotland (No. 4). A subsequent Ordinance (No. 21) extends the privilege to persons entitled to practise as notaries in the United Kingdom. The fee on a licence is Rs. 100.

Another Ordinance (No. 19) prescribes a heavy penalty in the case of an unauthorized person drawing any instrument relating to real property.

Criminal Procedure.—All charges against Europeans or Americans, except such as are dealt with summarily under s. 260 of the Indian Penal Code, must be tried before the Court of Session. The jury must be Europeans or Americans, and the number of this jury is to be five, unless the Judge requires a larger number. The prisoner and his wife are competent witnesses, subject to provisions similar to that of the English law.

Game.—The Regulations of 1900, which have been hitherto in force, are repealed in view of the new Ordinance (No. 9), which imposes additional restrictions and closes some holes whereby evasion has been practicable.

There are four classes of licences: (1) Sportsman's, (2) Public Officer's, (3) Settler's and (4) Landholder's. The Sportsman's and Public Officer's licences are alike as to powers, but while the Sportsman pays Rs. 750, the Public Officer pays only Rs. 150, in fact, the same as a Settler: the Landholder pays only Rs. 45.

The first three classes of licensees are restricted as to the numbers which they may kill of the animals specified in schedules. The landowner is not

restricted except as to certain protected animals, but his licence extends only to his own land.

The specially protected animals are the giraffe, buffalo, vulture, secretary bird, owl, ostrich (female or young), the elephant (with ivory of less than 60 lb.), and the greater kudu and rhinoceros in special districts. These may not be killed or captured, without special licence, either on Crown or private land.

Two spacious territories (besides certain forest areas) are set apart as game reserves, wherein it is unlawful to kill or capture any game; but the holders of special licences may be authorised to kill within them specified beasts or birds of prey whose presence is detrimental to the purposes of the reserve. A curious provision, which has no doubt some reason for it, is that "in the Uganda railway zone, whether included in a game reserve or not, it shall not be lawful to kill or capture any beast of prey." Many of us have recently been reading the thrilling story of the "Man-eaters of Tsávo," whose depredations were precisely in that zone.

Every licensee must keep a register of his bag, which must be submitted to, and signed by, the nearest Collector once every three months.

Exemption from the provisions of the Ordinance is made in the case of native tribes or villagers who satisfy the Collector that they are dependent on the flesh of game for their subsistence.

Mohammedan Marriage.—An interesting Ordinance (No. 13) provides for the registration of Mohammedan marriages and divorces. The system is under the supervision of the Registrar-General, but all the Registrars must be Mohammedans.

Immigration.—The Protectorate by Ordinance No. 17 is endeavouring to protect itself against "undesirable immigrants." The grounds of exclusion are similar to, but somewhat wider than, those of our Aliens Act. A noticeable distinction is that British subjects may be excluded as undesirables.

Books and Newspapers.—A gratifying testimony to the progress of East Africa is shown in No. 20, which provides for the registration of books and newspapers published in the Protectorate. Provision is made for the free delivery to the Government of certain copies of every book published, and for the transmission of one or more of such copies to the British Museum or the Colonial Office.

Police.—The gradual substitution of Local Law for Indian Law proceeds, the latest being a Police Ordinance (No. 22) in place of the Indian Police Regulations Act of 1861.

2. BRITISH CENTRAL AFRICA.

Ordinances passed—10.

Mining.—A Mining Ordinance (No. 2) supersedes the Ordinance of 1899 and is drawn according to South African precedent. There are "prospecting

areas," "public fields," and "reward claims." The royalties payable to the Government on the produce of mines are 5 per cent. on gold and silver and 10 per cent. on diamonds.

Procedure.—Two long Ordinances (Nos. 4 and 5) deal with procedure in the High Court and Subordinate Courts respectively. It is unnecessary to state other than their distinctive features. Trials for murder are to be held with the aid of assessors unless the Judge sees fit to summon a jury.

In any trial of a native the Judge may interrogate him during the case for the prosecution or after, but not during his defence: he is not bound to answer.

In other respects the High Court procedure follows in part the English, with useful additions from the Indian Codes and from former Orders-in-Council.

In the other Ordinance is a provision enabling a magistrate to hold an inquiry where there is sworn information of an offence, and no person is charged.

Crimes are tried on an information or indictment lodged by the Attorney-General. It is presumed that short forms are to be used, but the only form given in the Schedule is one of an indictment for murder, which happens to be perhaps the only short form in use in England. It would have been advisable to give forms for forgery, false pretences, and some other offences.

Medical Practitioners.—There is a new Ordinance (No. 9) for the registration of medical practitioners. To be entitled to be registered, a person must hold a diploma in the United Kingdom, a British Colony, or a foreign country. No provision is as yet made for granting diplomas in the Protectorate.

VIII. SOUTH ATLANTIC.

[*Contributed by* Edward Manson, Esq.]

1. THE FALKLAND ISLANDS.

Flogging (No. 1).—A sentence of flogging—for any offence so punishable by law—is not to exceed 28 strokes in the case of adults and 12 in the case of juvenile offenders. The instrument is to be approved by the Governor. Females are in no case to be flogged.

Arms and Ammunition (No. 2).—The Governor may by proclamation forbid the carrying coastwise or the exportation to any country of any arms, ammunition, or naval or military stores.

Liquor Licences (No. 3).—This is in furtherance of the modern policy of "black-listing" inebriates. Any licence-holder serving such prohibited person is made liable to a penalty of £5.

Supply (No. 4).

Pensions.—No. 5 regulates pensions, gratuities and other allowances in respect of public offices in the Colony.

Interpretation and General Law Ordinance (No. 6).—Any place within the Colony may be declared by the Governor in Council, with the approval of the Secretary of State, to be a "town."

Land Ordinance.—No. 7 defines the meaning of "suburban" and "town."

2. ST. HELENA.

Supply (Nos. 1, 3).

Minerals (No. 2).—All Crown lands containing or supposed to contain mineral deposits may be let on lease for terms of three years renewable, but not exceeding a total of twenty-one years. Every lessee is to keep a book open to inspection by the Governor, and enter the amount of the ore raised.

No such lease is to pass the right to any gold, silver, or platinum, or to any precious stones. The Governor in Council may cancel a lease if operations are suspended or rent in arrear.

Taxes and Rates (No. 6).—This is machinery for the levying and collection of taxes and rates.

Liquor Licences (No. 7).—Application for a liquor licence is to be made to a Justice of the Peace of the district, who may, if satisfied of the character of the applicant, certify the application to the Colonial Secretary; but power is reserved to the Governor to refuse an application if in his opinion the number of licensed premises is sufficient. There are special provisions as to hotel, tavern, and grocer's licences. There are usual provisions for the proper conduct of the business. Liquor is not to be sold to intoxicated persons or persons under sixteen. Gambling is not to be permitted or prostitutes harboured. In case of a riot licence-holders may be ordered to close their premises.

IX. NORTH AMERICAN COLONIES.

1. THE DOMINION OF CANADA.

[*Contributed by* J. A. Simon, Esq., M.P.]

Acts passed—185: Public, 52; Local and Personal, 133.

Supply (Nos. 1, 2, 3).

Criminal Law (No. 5).—The Judge of any Superior or County Court is empowered to appoint a commissioner or commissioners to take the evidence of any person residing out of Canada relating to an offence for which a prosecution is pending; but the assent of the Attorney-General to such appointment must be obtained.

Evidence of Accused (No. 10).—The new principle of allowing prisoners to give evidence on their own behalf here receives recognition. "Every person charged with an offence and, except as hereinafter provided, the wife or husband, as the case may be, of the person so charged shall be a competent witness for the defence." The exceptions protect communications made by husband to wife, or wife to husband during marriage.

Revenue (No. 12).—The fiscal year is fixed from April 1 till March 31.

Forest Reserves (No. 14).—The object of this Act, as the preamble states, is to create reserves in Manitoba, Saskatchewan, Alberta, and British Columbia in order to protect and improve the forests and secure a permanent supply of timber and also to protect the animals, fish, and birds within the boundaries of such reserves. The reserves are to be known as the Dominion Forest Reserves, and are placed under the control of the Superintendent of Forestry and rangers. The Schedule to the Act specifies the reserves thus set apart in the various Provinces and defines the boundaries.

Fruit Marks (No. 15).—Every person packing fruit in a closed package intended for sale is to cause the package to be marked in a plain and indelible manner, in letters not less than half an inch long, (i) his name and address, (ii) the name of the variety or varieties, (iii) a description of the grade of the fruit, which is to include one of the following four marks, viz. "Fancy," "No. 1," "No. 2," "No. 3." No one is to use any of these descriptions unless the fruit conforms in quality, etc. to the standard defined in each case by the Act.

Gold and Silver Marking (No. 17).—No article composed in whole or in part of gold or of silver, or of any alloy of gold or of silver, is to be made or sold or imported into Canada if it bears any other than a trade mark, a date mark, and a quality mark—that is, a mark truly and correctly indicating, as required by the Act, the quality of the gold or silver, or alloy of gold or of silver used in the making of the article.

Dealers selling or importing articles purporting to be of gold, but marked to be of less than ten carats in fineness, are to be guilty of an indictable offence. There is a similar provision as to silver articles containing less than $\frac{925}{1000}$ of the pure metal.

Plated articles must show the proportion of gold, silver, or other metal with which they are overlaid. Any dealer selling or importing electro-silver plated articles bearing a false mark is to be guilty of an indictable offence.

Immigration (No. 19).—This is an Act regulating, with considerable strictness, immigration into the Dominion with a view to the exclusion of the unfit. It empowers the Governor in Council to establish immigration offices in and outside Canada, and to appoint a superintendent of immigration, immigration agents, medical and other officers.

No vessel is to enter Canadian waters having on board any greater number of passengers than one adult passenger for every fifteen clear superficial feet of deck or one for every two tons of tonnage.

The master of any vessel is to deliver to the immigration agent at the port of arrival a report of the passengers on board on a prescribed form, and, in particular, the name and age of any who are lunatic, idiotic, epileptic, deaf and dumb, or dumb, blind, or infirm, or suffering from any disease or injury.

Immigrants so reported are not to be allowed to land except in the case of blind, deaf, and infirm, where they are part of a family who can give security for their permanent support. Paupers, professional beggars, vagrants, and persons likely to become a public charge, convicts, prostitutes, and procuresses are also prohibited. The immigration agent, the medical officer, and another officer appointed by the Minister, are constituted a board of inquiry to determine the admissibility of immigrants. Prohibited immigrants who have arrived by train must be deported by the railway company. Any immigrant who has within two years of his landing committed a crime involving moral turpitude or become an inmate of a gaol, hospital, or charitable institution, may be deported.

Another feature of the Act is the protection of immigrants. The master of the vessel is to land the immigrants at an hour and place fixed by the immigration agent. Shelter and accommodation are to be provided for them until they can be forwarded to their destination. The immigrants are not to be consulted or solicited by any persons other than those licensed for the purpose. "Runners" and agents for railway and steamboat companies or hotels are not to board the vessel. Taverns, hotels, and boarding-houses are to exhibit, conspicuously, their tariff of prices. All the provisions of the Act are fortified with heavy penalties.

Interpretation (No. 21).—Some rules are laid down as to the commencement of Acts, the mode of citation, the application of definitions, and the construction of an amending Act with the Act it amends.

Leprosy (No. 24).—Every person in Canada found to be afflicted with leprosy may be confined in a lazaretto for lepers; and for the care of such patients the Governor in Council is empowered to establish a lazaretto with a medical superintendent under the direction of the Minister of Agriculture. Persons suspected of having leprosy may be examined by the medical officer, and if reported as requiring confinement, they may, on warrant issued by a Judge, be committed to a lazaretto. Harbouring or concealing a leper is made an offence punishable with a fine of $100. The inmates of a lazaretto are to be detained there until the medical superintendent certifies that it is safe for them to be at large.

The Lord's Day (No. 27).—This is a remarkable Act. To some it will appear a recrudescence of Puritanism; to others a sound State policy against the spread of the "Continental" Sunday. All buying and selling, all exercise by a man of his ordinary vocation or business, either by himself or by his employés, on the Lord's Day, that is, from 12 o'clock on Saturday till 12 on Sunday night, is made unlawful, subject to an exception in the case of works of "necessity or mercy." Of these the Act gives a number of illustrations, but they are not to be deemed exhaustive; thus, work may be done in connection with divine service, the sale of drugs and medicines, telegraph and telephone messages, starting and maintaining fires, ventilating and pumping mines, keeping railway tracks clear of snow, loading or unloading any ocean-going steamer, the delivery of milk for domestic use, the work of domestic servants and workmen.

It is to be unlawful for any person to engage in any public game or contest for gain, or to be present at any performance or public meeting, elsewhere than in a church, at which any fee is charged for admission. It is further made unlawful for any person on the Lord's Day to run any excursion for hire, or to shoot with any gun or rifle for gain, or in such manner as to disturb other persons in attendance at public worship. Foreign newspapers are not to be sold. The violation of any of the provisions of the Act is visited with a fine of $40.

Moneylenders (No. 32).—No moneylender is to stipulate for more than 12 per cent. interest on any loan under $500; after judgment the rate is to be reduced to 5 per cent. The Court is given power to inquire into and re-open transactions and relieve the borrower from any interest in excess of the above rate.

Any moneylender violating the Act is liable to imprisonment for a year.

Penitentiaries (No. 38).—By this Act all the penitentiaries in Canada, and all prisoners therein, are brought under the control of the Minister of Justice, who is to exercise over them complete administrative power. Other penitentiaries or prisons may from time to time be established by the Governor in Council. The Governor in Council is further empowered to appoint two inspectors of penitentiaries and such other prisons, to visit, examine, and report upon their state and management. He may also

appoint wardens and deputy-wardens for penitentiaries, fix salaries, and allot gratuities.

Juvenile offenders in reformatories found incorrigible may be removed to a penitentiary.

Convicts are to be kept at hard labour for ten hours a day at least, exclusive of hours for meals. Female convicts are to be kept in a separate ward, under charge of a matron. A record is to be kept of the daily conduct of every convict, his industry and obedience to prison rules, and by such conduct, if exemplary, the convict may earn a partial remission of his sentence not exceeding six days for every month of good behaviour credited to him. A convict with twenty-two days' remission to his credit may earn remission at the rate of ten days per month. A list of prison offences is to be drawn up by the inspector, and a copy placed in each cell. Convicts are not, unless at their own request, to be discharged during the months of December, January, and February, but may stay on. At discharge the ex-convict is to be supplied with a suit of ordinary clothes, the means of transportation to the place where he was convicted, or any other place he may select, and a sum of money not exceeding $10. Justice and mercy seem happily met together in this Act.

Mining (No. 39).—This is a technical Act, regulating "placer" mining in the Yukon Territory—the right to acquire mines, the nature and size of claims, locating and recording, survey, title, grouping, water rights, drainage, etc.

Railway (No. 42).—The important Railway Act of 1903 is here amended and supplemented. The Act deals with the jurisdiction of the Railway Board, their power to regulate the construction of rolling stock, railway accommodation, and the running of trains, connections, "express" tolls, telephone tolls, and other incidents of railway traffic.

—— (No. 42) authorises the granting of subsidies in aid of the construction of certain railways.

Shipping (No. 46).—With a view to the safety of ships and the prevention of accidents, masters of sailing and steam ships are forbidden during the winter months, and for certain voyages, to load deck cargoes of timber of certain kinds.

Senate and House of Commons (Nos. 48, 49).—A deduction of $15 a day from a member's sessional allowance is made for non-attendance, except in cases of illness. A member is also to be allowed his actual moving or transportation expenses and reasonable living expenses between his place of residence and Ottawa. Each member is to furnish the Clerk of the House with a statement of attendances, rendered monthly, and of his travelling expenses. No member of the Senate or House of Commons is, under peril of a penalty of $1,000 and $500 respectively, to accept any compensation for services rendered or to be rendered to any person in relation to any Bill, proceeding, contract, claim, or other matter before

the Senate or House of Commons or a Committee of either House, or in order to influence any member of either House.

Weights and Measures (No. 52).—When milk is sold by measure, all cans or other vessels of a capacity of one gallon or over used for such sale are to contain one Dominion standard gallon or some multiple of such gallon. The capacity of the can and the name of the maker are to be stamped on it by inspectors, who are to be paid certain fees. Cans in use are to be verified and stamped to the amount of their capacity.

Miscellaneous Minor Acts:

Court of Appeal for Manitoba (No. 4).
Currency, Redemption of Worn Silver or Copper Coins (No. 8).
Customs Tariff, Machinery and Railway Rails (No. 9).
Final Judgment Defined (No. 11).
Game Preservation in Unorganised Territories (No. 16).
Grain Inspection Act, 1904, *Amended* (No. 18).
Indian Lands, Moneys from, Disposal of (No. 20).
Judicature—Judges to have Travelling Allowances (No. 22).
——— *Supreme and Exchequer Courts* (No. 50).
Loan Companies, Prescribes on what Securities such Companies may make Advances (No. 26).
Lotteries, the "Art Union" of London exempted (No. 6).
Manitoba Grain Act, 1900, *Amended* (No. 28).
Militia (Nos. 29, 30, 31).
Harbour Commissioners of Montreal (Nos. 33, 34, 35).
National Transcontinental Railway Companies (No. 36).
Harbour of North Sydney in Nova Scotia (No. 37).
Privy Councillors, Annuities to (No. 40).
Quebec Harbour (No. 41).
Rocky Mountains Park (No. 44).
Whaling Licences for Hudson Bay are fixed at $50.

2. BRITISH COLUMBIA.

[*Contributed by* J. A. Simon, Esq., M.P.]

Assessment.—This Act, among other things, substitutes a new scale for the taxation of income. Where the taxable amount does not exceed $2,000 the scale is 1½ per cent.; over $2,000 and under $3,000, 1¾ per cent.; over $3,000 and under $7,000, 3 per cent. A new scale is also established for real property other than wild land, coal or timber land. The Act also deals with the procedure on forfeiture of mineral or placer claims.

Dairy Associations (No. 2).—A meeting of any association of this kind is to be held in the first three months of each year, for election of a President,

Vice-President, and Board of not less than five directors. The Lieutenant-Governor in Council is given power to appoint inspectors of practical experience in dairying. Such inspectors are to visit creameries and cheese factories, to advise and assist the owners as to the making and marketing of their products, to inspect stables, stock, dairies, and utensils, for the purpose of ensuring cleanliness, and, if necessary, to condemn any dairies found to be unfit.

Life Boats (No. 4).—This incorporates the first Life-boat and Life-saving Association of British Columbia, which is to consist of all persons contributing not less than $1 to the objects of the Society. Branch Societies may be formed.

Live-stock Breeding (No. 5).—"Live stock" in this Act includes horses, cattle, sheep, pigs, goats, donkeys, dogs, turkeys, geese, ducks, fowls, pigeons, and rabbits. With a view to improve the breed of such "live stock" the Lieutenant-Governor in Council is given power to grant a charter of incorporation to "The Stock-breeders' Association of British Columbia." The Association may hold exhibitions of live stock and agricultural implements, employ judges, lecturers, and instructors, award prizes, and keep a bureau for the collection and dissemination of information. Rules may be made for excluding gambling, huckstering, circus, and mountebank performances from the meetings of the Association.

Land Surveying (No. 6).—A number of amendments of detail are made in the constitution of the British Columbia Surveyors of Land Corporation, relating mostly to rating and the registration of members.

Companies (No. 10).—The provisions of the Companies Act, 1900 (United Kingdom) (since amended), as to the registration of mortgages and charges by a company are here adopted for British Columbia, *mutatis mutandis*. The Act applies to Extra-Provincial Companies carrying on business within the Province.

Distress (No. 16).—When a distress is levied for taxes justly due, or any penalty incurred, and any irregularity is committed by the party distraining, the distress is not henceforth to be deemed unlawful, but the party aggrieved may have his remedy by action for damages.

Land Registration (No. 23).—This is the most important enactment of the year. It extends and systematises the registration and transfer of land throughout the Province. In addition to the existing land registers, district registers are to be established, with Examiners of Titles. Every person claiming to be registered as owner in fee is to apply to the Registrar in a prescribed form and deposit his title deeds—accompanied in certain cases with maps and plans—with the Registrar, and the Registrar, if satisfied that "a good safe-holding and marketable title in fee simple" has been established, is to register the applicant in the "Register of Indefeasible Fees." If not so satisfied, he is to refer the application to an Examiner of Titles, who, after examination, may direct the Registrar to register the title as an

Indefeasible Fee or as an Absolute Fee after notices given, or may direct the Registrar to refuse registration. An "absolute fee" is defined as meaning the "legal ownership of an estate in fee simple." Certificates in an appropriate form are to be issued to the registered holders of "Indefeasible Fees" and "Absolute Fees." In the case of an Indefeasible Fee no application for registration of any estate or interest in the land or any part of it is to be entertained unless as a "charge" on the land. "Charge" is defined as meaning "any less estate than an absolute fee or any equitable interest, and is to include any incumbrance, Crown debt, judgment, mortgage, or claim to or upon any real estate." Any "charge" may be registered, provided there has been registration of the fee, absolute or indefeasible, but not a mere equitable mortgage or lien by deposit of title deeds. No entry of trusts is to be made in the register where two or more persons are interested in distinct interests or estates in the same land by way of remainder or otherwise. The first owner of an estate of inheritance is to be registered as the owner of a fee, and the interests or estates of the others are to be registered by means of a charge or charges. In case of infants and persons under disability the Court may enter a charge on their behalf. Any person interested may, by leave of the Registrar, lodge a caveat against transfer. Registration of a charge is to operate as notice to any person dealing with the land.

On any transfer the transferee is to be registered and a new certificate issued to him. Mistakes or misfeasances by the Registrar are to be made good out of an Assurance Fund which is to be formed by deducting 20 per cent. of the fees on registration and accumulating the same with interest.

The fees appear very moderate. Thus, the fee for registration of any absolute or indefeasible title is $1 ; of a certificate of indefeasible title, $5 ; for registration of a charge, $1 ; for a certificate of search, $1.

Crown Lands (No. 24).—Any person under the amending Act, being the head of a family, a widow, or single man over eighteen years of age, and a British subject or an alien who has formally declared his intention of becoming a British subject may record any tract of unoccupied and unreserved Crown lands not exceeding one hundred and sixty acres in extent; but only for *bonâ fide* agricultural purposes.

Holders of timber leaseholds or licences may obtain a right-of-way across any Crown-granted lands for the purpose of constructing chutes, flumes, or roads.

Ancient Lights (No. 25).—It is a somewhat startling provision which is embodied in this Act: "No person shall acquire a right by prescription to the access of light to or for any building."

Liquor (No. 26).—Only three licences to sell liquor by retail are to be granted for any locality unless the population exceeds 500, and thereafter only one additional licence for every additional 1,000 population.

Municipalities (No. 32).—This is an Act for standardising Municipal

Government. It declares of whom municipal councils are to be composed, how they are to regulate their business, what byelaws a municipality may make, and how it may enforce them; its duty in regard to the poor and destitute; its capacity to contract debts, to borrow on the security of water, gas, or electric rates; the audit of its accounts, the levying of rates, the amounts chargeable for traders' licences, liquor licences, police magistrates, highways and bridges, public parks, and all the other necessities and amenities of civic life.

College for Learning (No. 38).—The Royal Institution for the Advancement of Learning of British Columbia is hereby incorporated to establish a college for the higher education of men and women, under the name of the McGill University College of British Columbia, and for providing courses of study leading to degrees of McGill University.

Supply (No. 41).

Timber (No. 43).—Official scalers are appointed for the measurement of timber and saw logs. The fees are a lien on the timber.

Wild Horses (No. 48).—On the written request of at least five owners of horses ranging upon the public lands of any district, a licence may be issued by the Government Agent to any person named authorising him to kill horses running wild upon the public lands.

Miscellaneous Minor Matters.

Amendments of detail are made in the following Acts:

Steam Boilers Inspection Act, 1901 (No. 7).
County Courts Act, 1905 (No. 11).
Small Debts Acts, 1897 (No. 13).
Supreme Court Rules Act, 1907 (No. 14).
Municipal Elections Act, 1906 (No. 18).
Provincial Elections Act, 1903-4 (Nos. 19, 20).
General Trusts Corporation Act, 1905 (No. 22).
Health Act, 1897 (No. 22).
Liquor Traffic Regulation Act, 1897 (No. 27).
Placer Mining Act, 1897 (No. 29).
Coal Mines Regulation Act, 1897 (No. 30).
Plans Cancellation Act (No. 36).
Public Schools Act, 1905 (No. 39).
Statutes and Journals Act, 1906 (No. 40).

3. PROVINCE OF MANITOBA.

[*Contributed by* H. STUART MOORE, ESQ.]

Acts passed—Public, 100; Private, 23.

Joint Stock Companies (Nos. 13, 14).—These Acts amend the Manitoba Joint Stock Companies Act and, *inter alia*, empower the Lieutenant-Governor in Council to revoke and cancel the letters patent incorporating a company

which has failed to make returns for two successive years, and renders liable to a penalty of $2,000 a person who allows his name to be used as a director, trustee, or member of the board of management in consideration of an allotment or transfer of shares in the Company.

Supreme Court (Nos. 17, 18).—The first of these Acts amends, in a number of particulars, the King's Bench Act. It allows service of a subpœna for examination to be made on the parties' solicitor instead of by personal service. The second Act constitutes a Court of Appeal from the King's Bench sitting *en banc* and from the County Courts. The Court must consist of three Judges. Non-jury cases on the civil side are not to be tried at assizes.

Elections Law (Nos. 23, 24).—These Acts amend, in a number of particulars, the law relating to elections for the various electoral divisions of the Province.

Fires (No. 25).—This Act amends the Fires Prevention Act. The Fire Commissioner or his deputy may hold an inquiry into the cause or origin of any fire in the Province and ascertain whether it was kindled by design or how otherwise. Such person has the power and authority of a Judge of a County Court or coroner as to obtaining evidence. He also has the authority and jurisdiction of a police magistrate or provincial constable for the arrest and punishment of persons disturbing the peace at a fire or suspected of stealing property there. The Attorney-General can order an inquiry to be held as to the cause and origin of any fire. The Fire Commissioner must keep a record of his investigations, which is at all times open to public inspection. The Commissioner, and various other persons, may enter upon premises and may order the removal of any combustible materials there found. If conditions dangerous to the safety of the premises exist, he may order such conditions to be remedied. The expenses of maintaining the office of the Fire Commissioner are to be defrayed by the Insurance Companies doing business in the Province.

Provincial Emblem (No. 29).—The *Anemone patens*, popularly mis-called the Crocus, is declared to be the floral emblem of this Province.

Game Preservation (No. 30).—This Act amends the Game Protection Act in many respects. Fawns of deer cabri or antelope, elk, or wapite, moose reindeer, or cariboo are protected at all times. The close season for muskrats is May 8 to January 1; for grouse, November 1 to October 1 of the following year; for pheasant, from passing of Act to October 1, 1909; for ducks, from December 1 to September 1 of the following year. No person may kill more than fifty ducks in a day, except between October 1 and November 30. In cases of confiscation of game for offences against this Act, the confiscated property, if dead, is to go to the prosecutor, unless he be an officer of the Government when it is to be given to some charitable institution, at the discretion of the convicting Judge. Live animals become the property of His Majesty in right of the Province.

Horse-breeding (No. 32).—This Act compels the owner of any stallion

standing or travelling for profit to enrol every year, with the Department of Agriculture and Immigration, the name, description, and breeding of such stallion. In the case of a pure-bred stallion the owner must make a statutory declaration that to the best of his knowledge such stallion is free from hereditary or transmissible unsoundness or disease, *i.e.* bone-spavin, cataract, curb, navicular disease, periodic ophthalmia, sidebones, ringbone, roaring, thick-wind or whistling, thoroughpin or bog-spavin. According to the class of stallion a licence certificate is issued by the Department, and copies of this must be exhibited conspicuously in every stable or building where the stallion stands for public service.

Liquor Traffic (No. 38).—This Act amends the Liquor Licence Act. It also provides that persons under eighteen years are not to be allowed in billiard, pool, or bagatelle rooms in connection with licensed premises without the consent of the parent or guardian of such person.

Marriage Law (No. 41).—This, the Marriage Act, 1906, allows the ceremony of marriage between persons not under legal disqualification to be solemnized by the ministers and clergymen of every church and religious denomination, duly ordained, according to the rites and ceremonies of the church or denomination to which they belong. Such may include (1) the society of the religious people called or known as "Churches of God" or of Christ, and individually as "Disciples of Christ"; (2) the religious society called the Salvation Army; (3) certain Jewish Synagogues; (4) the religious Society of Friends called Quakers. No marriage can be celebrated unless a licence has been obtained from the Minister of Agriculture and Immigration, or banns have been published. Marriages may be solemnized between 6 a.m. and 10 p.m., and must be in the presence of two or more witnesses. Persons under eighteen (unless a widow or widower) cannot marry without the consent of the father or mother or guardian. If the father or mother is not resident in the Province, but the party is and has been a resident for the preceding twelve months, a licence may be granted. Persons under sixteen cannot marry except when necessary for the legitimation of offspring. It is an offence to marry persons knowing one or other to be an idiot or insane. Certain marriages solemnized before the passing of this Act are declared valid.

Noxious Weeds (No. 65).—The Noxious Weeds Act, 1906, repeals the previous legislation on this subject and prescribes the law for the destruction of these pests to agriculture. Noxious weeds include common wild mustard, hare's ear mustard, tumbling mustard, Canada thistle, Russian thistle, perennial sow thistle, wild oats, French weed or stink weed, false flax, giant ragweed, dwarf ragweed, false ragweed, blue burr, blue lettuce, prickly lettuce, and any weeds to which this Act may be applied by a byelaw of any municipality.

Appropriation (Nos. 84 and 85).—These Acts provide, $2,194,114.55 for the Government of the Province till December 3, 1906.

Telephone and Telegraph Systems (No. 89).—This Act empowers the

Government of the Province to own and work telephone and telegraph systems. In the event of the Government purchasing any system, if the price is not agreed upon, it is to be assessed upon the actual value of the property, having regard to what the same would cost if then constructed, less deterioration, wear and tear, plus 10 per cent. Nothing is to be allowed for franchise or prospective profits.

4. PROVINCE OF SASKATCHEWAN.

[*Contributed by* H. STUART MOORE, ESQ.]

Acts passed—64, of which 19 are classed as Local or Private.

By the provisions of the British North American Act, 1871, the Parliament of Canada has power to establish new Provinces in any territories forming for the time being part of the Dominion of Canada. By the Saskatchewan Act of 1905 the following territory was created into a Province, *i.e.* from the intersection of the international boundary dividing Canada from the United States of America by the west boundary of the Province of Manitoba, thence northerly along the said west boundary of the Province of Manitoba to the north-west corner of the said Province of Manitoba; thence continuing northerly along the centre of the road allowance between the 29th and 30th ranges west of the principal meridian in the system of Dominion land surveys, as the said road allowance may hereafter be defined in accordance with the said system, to the second meridian in the said system of Dominion land surveys, as the same may hereafter be defined in accordance with the said system; thence northerly along the said second meridian to the 60° of north latitude; thence westerly along the parallel of the 60° of north latitude to the fourth meridian in the said system of Dominion land surveys, as the same may be hereafter defined in accordance with the said system; thence southerly along the said fourth meridian of the said international boundary dividing Canada from the United States of America; thence easterly along the said international boundary to the point of commencement.

The Act provides that the new Province is to be governed until its Legislature otherwise provides, in the same way as the North-West Territories is governed.

The first session of the first Legislature began on the 29th day of March and closed on the 26th day of May.

Appropriation (No. 1).—This Act provides $118,608.77 for the public service for 1905, and $2,067,567.67 for 1906–1907.

Legislature (No. 4).—The Legislative Assembly Act defines the qualifications for a Legislator and the procedure to be employed in the Legislative Assembly. It also provides that members are to receive $1,000 for each session, together with certain travelling expenses.

Public Service (Nos. 5, 7–11).—The Public Service Act (No. 5) defines the public service of the Province as including the Clerk of the Legislative Assembly, the Provincial Auditor, and all employés in the office of the Executive Council, the Departments of the Attorney-General, Provincial Secretary, Treasury, Public Works, Agriculture, Education, Railway Commission and offices of the Legislative Assembly. Acts Nos. 7–11 define the duties of the Departments of the Attorney-General, Provincial Secretary, Agriculture, Public Works, and Railway Commission.

Steam Boilers (No. 15).—This Act provides for the inspection every year of steam boilers carrying more than 15 lb. pressure of steam. After inspection a certificate is granted which is only *primâ facie* evidence of due inspection of the boiler and its fitness. Persons operating steam boilers must be certificated after examination in the theory and practice of operating a steam boiler. On due cause being shown, the certificate may be cancelled.

Land (No. 24).—The Land Titles Act, consisting of 204 sections, provides for the registration and descent of land, its transfer, leasing, and mortgaging. "Land" means: lands, messuages, tenements, and hereditaments, corporeal and incorporeal, of every nature and description, and every estate or interest therein, and whether such estate or interest is legal or equitable, together with all paths, passages, ways, water-courses, liberties, privileges, and easements, mines, minerals, and quarries appertaining thereto, and all trees and timber thereon and thereunder lying or being. In this Province land descends to the personal representative as personal estate and is distributed as such. Illegitimate children inherit from the mother as if they were legitimate, and the mother inherits the land of her intestate illegitimate offspring. If either parent leave the other and thereafter live in adultery, such party can take no land of the other. Leases for more than three years of land for which a certificate of title has been granted must be in the form scheduled to the Act. Mortgages for certificated land must also be in the form scheduled to the Act. The covenants in the statutory form of lease by the covenant are, (1) that he will not assign or sublet without leave, (2) will fence, (3) will cultivate, (4) will not cut timber, (5) will not carry on an offensive trade. The covenants in the statutory mortgage include, (1) that the mortgagee has a good title, (2) a right to mortgage, (3) in default the mortgagee shall have quiet possession, (4) freedom from encumbrances, (5) will execute such further assurance of the land as may be required, (6) has done no act to encumber the land.

Medicine and Dentistry (Nos. 28, 29).—The first of these Acts creates a College of Physicians and Surgeons, and provides for the qualification, election, and registration of its members. The second Act similarly creates a College of Dental Surgeons. Only members of these colleges are entitled to practise these professions in the Province.

Railways (No. 30).—The Railway Act, consisting of 225 sections, applies to all railways hereafter authorised to be constructed by any Special Act

of this Province, so far as it is incorporated in such Special Act. This Act is similar in many respects to the Railway Clauses Act of the United Kingdom.

Municipal Trading (No. 34).—The Municipal Public Works Acts empower the corporation of any city or town to construct and maintain waterworks and sewers and gasworks.

Free Libraries (No. 37).—The Public Libraries Act enables local authorities to establish free libraries if at least three-fifths of the electors of the locality voting so desire.

Dairy Produce (No. 39).—The Dairymen Act, 1906, provides for the incorporation of five or more persons into an association for the manufacture of butter and cheese, and of cold storage used in connection therewith.

Motor Traffic (No. 44).—Under this Act owners of motors must be registered and the vehicle must exhibit on it a number. The speed of motors in towns is limited to ten miles an hour and elsewhere to twenty miles an hour. The owner of the motor is responsible for any breach of this Act.

Statute Law Revision (No. 45).—The Revised Statutes Act, 1906, provides for the issue of a commission for the revision and consolidation of the Ordinances of the North-West Territories and their issue in the form of Statutes for this new Province.

5. PROVINCE OF ONTARIO.

[*Contributed by* JAMES S. HENDERSON, ESQ.]

Acts passed—150, of which 88 were Local or Private.

Loans.—No. 4 authorises a provincial loan not exceeding $3,000,000 for public purposes to be borrowed for any term not exceeding forty years, and at a rate not exceeding 4 per cent. Bonds and inscribed stock issued under the authority of the Act are to be free from all provincial taxes, succession duty, charges and impositions.

Sums in Hands of Accountant of Court.—No. 5 forfeits to His Majesty certain sums which by the direction of commissioners holding an inquiry had been lodged with the accountant of court, and provides that they are to be applied to such charitable uses as the Lieutenant-Governor shall determine.

Manhood Suffrage.—No. 6 amends the form of oath given in the schedule to the Manhood Suffrage Registration Act, by requiring the applicant for registration to declare that he is not a citizen or a subject of any foreign country.

Elections.—No. 7 amends the Ontario Election Act in regard to the numbers printed on ballot papers.

No. 8 also amends the same Act in regard to the person to whom writs for elections are to be addressed.

Supplementary Revenue.—No. 9 amends the Revenue Act, 1899, by imposing a uniform tax of $100 for the head office of every bank in the Province, and $25 for each additional office, branch, or agency, instead of, as formerly, making the tax a percentage on the paid-up capital stock of the bank. The Act likewise makes certain alterations in the tax on railways and street railways. Half the annual receipts from the tax on railways (after deducting a sum of $30,000) are to be credited to the various municipalities; but against that the municipalities are to be debited with the cost of maintenance of the inmates of asylums coming from such municipalities.

Department of Lands, Forests, and Mines.—No. 10 provides for the appointment of a deputy Minister of Lands and Forests, and also a deputy Minister of Mines.

Mines.—No. 11 is the Mines Act, a statute of 222 sections, codifying the law on the subject. It provides, *inter alia*, for the appointment of an official to be known as "Mining Commissioner," who must be a barrister of at least ten years' standing at the Ontario Bar, and is to be deemed an officer of the High Court. The Mining Commissioner is invested with extensive judicial powers in regard to mines and mining rights; and an appeal lies from his decision to a Divisional Court. Provision is made for a bureau of mines, and the appointment of a provincial geologist, assayer, inspector, and mining recorders. The Act further provides that no person, partnership, or company shall carry on in Ontario the business of mining or be entitled to explore for mines without first taking out a licence. Provision is also made with regard to Crown lands, mining claims, surface rights. S. 188 gives mine-workers a lien for their wages not exceeding the wages for thirty days. SS. 191 to 221 relate to the working of mines. The employment of boys under fifteen below ground in mines is prohibited; and except in the case of mica trimming works, no girl or woman may be employed at mining work in or about a mine. No boy or young male person of fifteen and under seventeen may be employed below ground in a mine on Sunday or for more than forty-eight hours in any one week, or for more than eight hours in any one day. A register of lads employed is to be kept. Excepting in towns and incorporated villages no liquor licence is to be issued for any place within six miles of any mine or mining camp where six or more workmen are employed. The payment of miners' wages in public-houses is prohibited. Abandoned or unworked mines are to be securely fenced. Mines are to be properly ventilated, and a sufficient number of portable water-tight privies may be ordered to be provided for underground employés. Provision is also made with regard to explosives, the protection of workmen in the mines and shafts. Accidents have to be notified.

Hydro-Electric Power Commission.—No. 15 provides for the appointment of a hydro-electric power commission which may be authorised to acquire lands, works, plant, and property of transmission companies, and may contract with municipalities and railway and other companies for the supply of power for lighting, heating, and other purposes.

Agriculture and Horticulture.—No. 16 is the Agricultural Societies Act. It states the object of such societies to be the improvement of agriculture, horticulture, arboriculture, domestic industry, etc. This improvement it endeavours to secure by awarding premiums for live-stock, agriculture implements, etc.; by organising ploughing matches and shows, etc. The Act also deals in detail with the organisation and regulation of such societies.

No. 17 incorporates a number of agricultural associations.

No. 18 deals with the organisation of horticultural societies.

Statute Law Amendment.—No. 19 is the Statute Law Amendment Act.

Succession Duty.—S. 11 amends the Succession Duty Act in certain details. It, *inter alia*, empowers the Surrogate Registrar in case of dispute to settle the debts, encumbrances, and other allowances and exemptions, and to fix the cash value of the estate.

Arbitration.—S. 13 amends the Arbitration Act by substituting new definitions of "submission" and "arbitrator." "Submission" is defined thus: " . . . unless a contrary intention appears, 'submission' means a written agreement to submit present or future differences to arbitration or valuation, whether an arbitrator or a valuator is named therein or not, and shall be deemed to include a written agreement to submit to arbitration or valuation or assessment the ascertainment of any sum or sums of money, or settlement of any terms or differences in any contract, in the fixing or determining of which two or more persons are or may be interested, whether the subject of difference or not, and whether an arbitrator, valuator, or assessor is named therein or not." The term "arbitrator" is to "be taken and read to include and mean 'valuator': and 'arbitration' to include and mean 'valuation.'"

Police Magistrates.—S. 14 enables the Lieutenant-Governor in Council to appoint two police magistrates for any city containing not less than 200,000 inhabitants. The salaries are not to exceed $5,000 in the case of the senior magistrate, and $3,000 in the case of the junior magistrate. During his continuance in office no police magistrate appointed under the section is to act as director of a company, or directly or indirectly practise in the profession of the law, under the penalty of forfeiture of office.

Conditional Sales of Chattels.—S. 23 provides that receipt notes, hire receipts, and orders for chattels given by bailees of chattels, other than manufactured goods, where the condition of the bailment is such that the possession passes without ownership being acquired by the bailee until payment, are only to be valid against subsequent purchasers without notice

if, within ten days from the execution of the receipt note, etc., the note is filed in the county court clerk's office.

Billiard-rooms.—S. 31 amends the "Act to prevent minors from frequenting billiard-rooms and other places" by raising the age of minors for the purposes of the Act from sixteen to eighteen. Keepers of billiard-rooms are consequently prohibited under penalties from admitting minors under eighteen.

Public Health.—S. 32 makes further provision for preventing the pollution of water supply.

Destruction of Wolves.—S. 33 authorises the payment of a bounty to a person killing a wolf, although the affidavit evidencing the fact of the destruction of the wolf has not been sworn before a person appointed under the Act.

County Courts.—No. 20 enables agreements to be made for the trial of High Court actions in a county court.

Libel and Slander.—No. 22 amends the Act dealing with this subject. It amends the definition of "newspaper" by making it include a publication issued at intervals of thirty-one days, instead of, as in the principal Act, confining the term to publications issued at intervals not exceeding twenty-six days. S. 2 protects fair and accurate reports of proceedings in Parliament or public meetings, or (except where the public or reporters are not admitted) meetings of any board or local authority constituted under any statute.

Devolution of Estates.—No. 23 amends the law on this subject. It declares who may be made defendants in foreclosure actions where there is no personal representative of a deceased mortgagor. It also defines executors' power of sale of real property.

Pharmacy.—No. 25 prohibits incorporated companies selling by retail poisons, drugs, or medicines unless a majority of the directors are duly registered as chemists and unless one of such directors personally manages and conducts the shop, and has his name and certificate posted up in a conspicuous position in the shop.

Engineers.—No. 26 amends the Stationary Engineers Act. It provides for the appointment of a board for the examination of persons for certificates under the Act; and it enacts that no uncertificated person may, for more than thirty days at any one time, operate or have the charge of any steam plant operating an engine of 50-horse power or over. Penalties are provided for violations of this enactment.

Companies.—No. 27 is the Prospectuses issued by Companies Act. After defining the term "prospectus," it enacts that companies may, in offering shares to the public, lawfully pay a commission for getting shares subscribed, provided the payment thereof and the rate of commission are authorised by the letters patent and disclosed in the prospectus. Brokerage may be paid. Every company which increases the number of its shareholders to a number greater by ten than the number of applicants for incorporation, or

which has its debentures or other securities held by more than ten persons, must file a prospectus. All sales, subscriptions, or other dispositions of shares, etc., are to be deemed as against the company or the signatories of the prospectus to be induced by such prospectus, and any term of the prospectus to the contrary is to be void. No subscription for stock, etc., induced or obtained by verbal representations is to be binding upon the subscriber unless prior to his so subscribing he has received a copy of the prospectus. Every prospectus must be dated, signed, and filed. As to the contents, etc., of a prospectus, the Act practically reproduces s. 10 of the English Companies Act, 1900. For breaches of the Act penalties are prescribed.

Railways.—No. 30 is the Ontario Railway Act. It consists of 260 sections, and codifies the law as to railway companies, their organisation, power to take lands, tolls, interchange of traffic, etc. S. 105 imposes upon every company the obligation of causing thistles and noxious weeds growing on the right-of-way and over the company's land adjoining the line to be cut down or rooted out each year before the plants have sufficiently matured to seed. The company is further (s. 106) to keep the land free from dead or dry grass weeds and other unnecessary combustible material. By the same section the company is also made liable for damage occasioned by fires started by locomotives, whether the company has been negligent or not. If, however, it is shown that modern and efficient appliances have been used, and the company has not been guilty of negligence, the total amount of compensation recoverable in respect of a fire or fires started by the same locomotive on the same occasion is not to exceed $5,000, to be apportioned among the claimants as the Court may determine.

By s. 114 trains are to start and run at regular hours, and they must furnish sufficient accommodation for all such passengers and goods as within a reasonable time previous to the advertised time of starting are offered for transportation. Fares or tolls are due by passengers on entering the train; on refusal to pay, the passenger may be expelled (s. 116). Persons injured while on the platform of a train, or on any baggage or freight car, in violation of the regulations, are barred from any claim, if there was room inside the passenger cars (s. 117). Except by permission of the Ontario Railway and Municipal Board, no passenger train upon a steam railway is to have any freight, merchandise, or lumber car in the rear of any passenger car in which any passenger is carried (s. 118). Adequate station accommodation must be provided (s. 128). Provision is also made for the inspection of railways, rolling stock, etc. (s. 162). Motormen have to be examined before being appointed (s. 221); examination for colour-blindness is also provided for (s. 222). Actions for damages against railway companies must be commenced within one year from the time the damage was sustained, or if there is continuation of damage within one year after the committing of the damage ceases (s. 223). Mechanics, etc., are given a lien for wages

(s. 226). No company operating a line of railway of twenty miles in length or over is to permit or require a conductor, engineer, motorman, fireman, trainman, despatcher, or signalman who has worked in any capacity for sixteen consecutive hours to go again on duty to perform any kind of work unless he has had at least six hours' rest (s. 227). Returns have to be made as to accidents (ss. 228 *et seq.*). Selling liquor to railway employés on duty is prohibited under a penalty (s. 244).

Railway and Municipal Board.—No. 31 constitutes the Board referred to in the previous Act, as the Ontario Railway and Municipal Board, which is invested, in regard to various matters affecting railways, with all the powers of the High Court. The Board may make regulations for the purpose of ensuring safety on railways. It may also arbitrate in disputes between companies and their employés and mediate in case of strikes.

Burial Grounds.—No. 33 makes provision for the appointment of trustees of burial grounds when no provision has been made as to this in the deed or other instrument setting apart the land for this object.

Municipalities.—No. 34 amends the Municipal Act as to the annexation of territory to a city or town and in various other particulars.

No. 37 amends the Municipal Drainage Act in certain details.

No. 39 gives municipalities a discretion as to the rates to be charged for the supply of gas or electricity.

No. 40 amends the Municipal Waterworks Act. It reconstitutes the Board of Water Commissioners, and enables corporations to fix different rates for the supply of water.

No. 41 provides for the establishment of local telephone systems.

County Councils.—No. 35 provides as to the constitution, etc., of these councils.

Assessments.—No. 36 is the Assessment Amendment Act. It increases amounts of income received from personal earnings which are exempt from payment of income tax.

Exemption of Woodlands from Taxation.—No. 42 enables the council of any township to make a bye-law exempting woodlands from municipal taxation, provided that such bye-law does not exempt more than one acre in ten, and not more than twenty-five acres held under a single ownership.

Roads Improvements.—No. 43 amends the law on this subject in certain details.

Motor Vehicles.—No. 46 repeals former enactments and makes further provision as to this subject. Motor vehicles have to be registered; each must be equipped with an alarm bell, gong, or horn, and also be provided with a lamp. In a city, town, or incorporated village no motor vehicle is to exceed ten miles an hour; outside, the maximum speed is fifteen miles an hour. Councils may, however, by bye-law set apart roads on which for testing purposes motors may be driven at a higher speed. These vehicles are not to be driven recklessly, nor on a public road for a wager. No

intoxicated person is to drive. Every one in control of a motor is to use all reasonable precaution not to frighten horses. In case of an accident, the person in charge of the motor whose presence has occasioned the accident must return to the scene of the accident, and upon request give his name and address, and that of the owner of the motor. When not in use motors must be locked while standing in any public place. In case of accident the onus of proof is cast upon the owner or driver. For certain violations of this Act the person committing same may be arrested by peace officers without warrant.

Liquor Licences.—No. 47 amends the Liquor Licence Laws. It prohibits the issue of licences to members of municipal councils or their wives, and licensees are disqualified for election to councils. Bar-tenders must be licensed. A bar-tender's licence is not to be issued to a minor or to a woman. Subject to certain regulations tavern or shop licences may be granted to partnerships and incorporated companies. The duties payable for tavern and shop licences are prescribed; they vary according to the population of the place where the licensed premises are. Licence duties are payable into a Licence Fund from which are defrayed the expenses of the Act, and the balance is divided equally between the Province and the city, town, or village where the licensed premises are situate. Sales of intoxicating liquors are prohibited between 7 p.m. on Saturday and 6 a.m. on Monday except upon a requisition for medical purposes signed by a medical practitioner or justice of the peace. Upon three convictions within two years licences are to be cancelled. Further provision is made as to the manner of submitting to the electorate the question of prohibiting the sale of intoxicating liquors except in houses of public entertainment. Penalties are prescribed for punishing frauds in the sale of liquor. Licensees are prohibited from entering into tied covenants. Licensees may be notified not to furnish liquor to inebriates.

Cheese and Butter.—No. 48 requires dairies and cheese factories to be kept clean and sanitary. Dairy inspectors may be appointed.

Preservation of Forests from Fire.—No. 49 enables the Minister of Lands to appoint fire rangers for the purpose of preventing fires during the construction of any railway passing through a public forest.

Bees.—No. 51 authorises the appointment of one or more inspectors of apiaries for ascertaining the existence of the disease known as "foul brood" among bees, and to take the necessary steps to eradicate the same.

Education.—No. 52 deals with the Department of Education.

No. 53 amends the Public Schools Act as to the grouping of schools for continuation classes, the expropriating of land for school purposes, the appointment of county inspectors, etc.

No. 55 is the Toronto University Act. It authorises the name to be changed to the University of Ontario, and deals with the whole organisation of the institution.

No. 57 relates to the admission to institutions for the education of the deaf and dumb and blind.

County Houses of Refuge.—No. 58 amends the Consolidated Municipal Act, 1903, by enabling orders to be made for the expense of the maintenance of any inmate to be paid out of the property possessed by him or her. These institutions are to be annually inspected by the inspector of prisons and public charities.

Hospitals.—No. 59 is the Toronto General Hospital Act.

No. 60 relates to the Hospital for Epileptics, its officers, inspectors, and admission of patients.

Custody of the Insane.—No. 61 empowers the issue of a warrant for the apprehension of any person believed to be insane and dangerous to be at large, and the committal of such person to some "safe and comfortable place" until the question of his sanity is determined. In no case is he to be committed to a prison unless he be violent and dangerous, and there is no other suitable place for his confinement. Provision is then made for the examination into the mental condition of such person, his removal to an asylum if found insane, and his discharge if found to be sane.

6. PROVINCE OF QUEBEC.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—114: Public, 44; Local and Personal, 70.

Supply—(No. 1).

Railways.—No. 2 deals with the appropriation of the price of the Quebec, Montreal, and Occidental Railway to the payment of the consolidated debt of the Province.

No. 3 provides for subsidies to certain railways.

Government Claims (No. 4).—A right of retainer out of any deposit made by the Government debtors in the Treasury is given to the Provincial Treasurer.

Elections.—No. 7 amends the law as to polling sub-divisions in a municipality.

No. 8 amends the form of affidavit by a claimant.

Licences.—No. 9 amends licensing law in a variety of particulars.

Liquor.—The number of hotel and restaurant licences is fixed for the City of Quebec at a maximum of 400. Taxes and transfers are also fixed. Auctioneers may, under a liquor licence, sell liquor as part of stock.

A trader not holding a liquor licence may not take orders for the supply of intoxicating liquors or act as an intermediary for that purpose.

Billiard Tables.—No person holding a licence for a billiard table is to allow any apprentice, schoolboy, or person under eighteen to play thereon, under a penalty. The same rule applies to bowling alleys.

Loan Office.—A licence to keep a loan office may be cancelled at the discretion of the Provincial Treasurer.

Commercial Travellers.—The affidavit for a licence for this purpose must give the name and address of the commercial house represented, the nature of the business, and whether the orders solicited are wholesale or retail.

Non-resident Stockbrokers coming into the Province to do business must obtain a licence, to be granted for six months.

Brokers, resident but not members of Stock Exchange, must register.

Agents of foreign stockbrokers must obtain a licence.

Circuses and Menageries.—A licence must be obtained for these.

Revenue (No. 10).—An annual tax is hereby imposed on companies, corporations, partnerships, associations, firms, and persons doing business in the Province, whether in his or its own name, or through an agent. Trading companies, banks, insurance companies, navigation, telegraph, telephone, railway, tramway, and trust companies, all come within the scope of the Act. The tariff or scale of taxation is fixed for each, *e.g.* in the case of railway companies, $10 for each mile of railway in operation; in the case of trading companies, $\frac{1}{8}$ of 1 per cent. of the paid-up capital, up to a million.

Succession Duty.—No. 11 resettles the scale of duty.

Tax on Transfer of Shares (No. 12).—This imposes a stamp duty at the rate of 2 cents for every hundred dollars on every transfer of shares, bonds, debentures, or debenture stock.

Motor Vehicles (No. 13).—"Motor vehicle" comprises all vehicles propelled by any power other than muscular force, excepting railway and tramway cars and motor vehicles running only on rails or railroads, and road rollers and traction engines.

Every owner of a motor vehicle is to file with the Provincial Treasurer a statement of his name and address and a description of the motor, factory number, name of manufacturer, motive power, and is to pay a fee of $5. Thereupon the motor is to be registered and a certificate given to the owner, together with a number and a metal or leather seal, which is to be affixed in a conspicuous position, with letters four inches in height and one in width. Manufacturers may apply for a general distinguishing number.

Every person who desires to operate a motor as a chauffeur must obtain a chauffeur's licence and badge. No such licence is to be granted till the applicant has given proof of his qualifications to the satisfaction of the Provincial Treasurer. The licence must be annually renewed. It may be revoked or suspended for a violation of the Act.

A person desiring to operate a motor otherwise than as a chauffeur must also obtain a licence and give evidence of his qualifications to the Provincial Treasurer.

A motorist is so to manœuvre his motor as to prevent horses being frightened, to safeguard riders and drivers: if necessary he is to stop. Every motor is to be provided with brakes, shrill horns, or other mode of signalling.

The rate of speed within the limits of a city, town, or village is not to exceed six miles an hour or fifteen miles an hour in any other locality. On bridges, at sharp turns, and on steep descents, the speed is to be reduced to four miles an hour. Contravention of the Act is punishable with a fine of from $20 to $100; in default of payment, imprisonment for one month, the punishment being doubled for a second offence.

Trust Companies (No. 14).—All Trust Companies are to be subject to inspection by an officer of the Treasury Department, and, to facilitate the inspection, each such company is each year to file with the inspector a report of its operations during the previous year. This report is to include:

1. A list of the company's officers and members;
2. A statement of the authorised capital;
3. A statement of the capital subscribed;
4. A statement of the investments of the company in the Province;
5. A list of the estates for which it is acting as trustee, etc.;
6. A statement of the company's assets and liabilities;
7. A statement showing the dividends declared and paid; and
8. Any other or further particulars required by the Provincial Treasurer.

Public Lands.—No. 15 amends the law in certain particulars as to Forest Reserves. Trees are to be cultivated so as to secure a constant supply of timber; locomotive engines passing through forests are to be provided with the most efficient means of preventing the escape of sparks.

Game in Gaspé.—No. 7 provides for the preservation of forest, fish, and game in certain unsurveyed lands of the Crown in this Peninsula.

Fishery.—No. 18 amends the Quebec Fishery Law in a number of matters of detail. A fishery overseer may determine the distance between every fishery. No person is to obstruct any fishway. Whoever uses dynamite or other explosive to catch fish is liable to imprisonment for thirty days.

Game (No. 19).—This, like the above Fishery Act, makes a number of amendments in the Quebec Game Laws.

Every bag or box for transport of game is to be made in such a way that the contents can be seen. The close season is altered for beaver, hare, bear, and muskrat; also for widgeon, teal, wild duck. Swamp partridge or woodcock are not to be sold before October 1. Persons engaged in the fur trade are to make returns of animals, vessels, boats, sheds, cars, etc., and search for game, furs, or skins killed. Inspectors and gamekeepers may enter. A table of fines is fixed for violations of the Act.

A special licence from the Minister is required for the hunting of moose, cariboo, or deer.

No person not domiciled in the Province can hunt therein without a special licence.

Stock-breeding Syndicates (No. 20).—Syndicates for the breeding and improvement of farm stock may be formed as joint-stock companies, and shares in such syndicates may be taken by farmers' clubs and agricultural societies, with the permission of the Minister of Agriculture. Only registered thoroughbred stock, free from hereditary defects, can be kept for breeding purposes. There are general provisions regulating the constitution and management of the Syndicate.

Homesteads (No. 21).—The protection of the homestead is one of the most remarkable developments in the legislation of Canada and Australia. This Act permits the owner of a homestead, on certain conditions, and with certain formalities, to hypothecate it.

Dairy Associations (No. 22).—A "dairy association" is to be composed of at least fifty persons contributing $1 each. Rules may be made for the admission of new members. The inspectors are to be experts holding certificates of competency. Annual grants may be made to the associations by the Lieutenant-Governor in Council, on their fulfilling the terms imposed.

Education.—No. 23 amends the Education Act in some minor points.

Joint-stock Companies (No. 31).—Every byelaw for changing a company's chief place of business is to be published in the *Quebec Official Gazette.*

Railways (No. 32).—All byelaws are to be submitted to and approved by the Railway Committee, who may approve such byelaws in whole or in part, or alter or vary them.

No toll is to be charged which unjustly discriminates between different localities. No company is to pool its freight or tolls with any other railway company or any common carrier.

Co-operative Syndicates (No. 33).—Co-operative Syndicates for consumption, production, and credit may be formed in the nature of a Joint-stock Company, with limited liability. The object of such syndicates is to be to study, protect, and defend the economic interests of the labouring classes, and for this purpose the syndicate may buy, for resale to the associates only, such articles as are necessary for the support of life or for the works of that industry, open up credits for them and make loans to them, establish works in common for the associates, or allow them to devote themselves to processes of production and selling the products thereof, either collectively or individually. Farmers' clubs and agricultural societies may take shares in such syndicates with the permission of the Minister of Agriculture The association is to be managed by a "board of management," composed of at least five members. There are full regulations as to the constitution and management of such associations.

Clubs (No. 35).—Clubs may, by resolution of a general meeting, change their name on depositing copies of their resolution with certain officials, and publishing notice of the change in the *Quebec Official Gazette.*

Game (No. 36).—Fish and Game Clubs, that is, sporting clubs formed for the enforcement of the laws regulating game, are to be forwarded to the Minister of Colonization, Mines, and Fisheries every year, a certified list of members and another list of guests and visitors giving their usual residence.

Fines (No. 37).—Fines may be recovered by action as debts. The Crown, or a municipal corporation (where the fine is for breach of a byelaw), may intervene at any stage in the proceedings. In cases of byelaw fines, one half is to go to the prosecutor and one half to the municipality.

Civil Death (No. 38).—Civil death is abolished. Condemnation to death, or to perpetual personal punishment is to carry with it civil degradation. Civil degradation consists:

1. In the removal of the condemned person from all public functions, employments, or offices;
2. In deprivation of the right to vote or to be elected, and generally of all civil and political rights;
3. In disqualification as a juror, arbitrator, or expert, and as witness to any deed or from giving evidence in court.
4. In disqualification from forming part of any family council, acting as administrator or trustee, and from being tutor, curator, subrogate, tutor, or judicial adviser.

Such condemned person is, further, in a state of interdiction, and may have a curator appointed to him to manage and administer his property. He cannot dispose of any part of his property by gift *inter vivos* or by will, nor receive anything but an alimentary allowance. Any will made by him prior to his condemnation is to be void.

A pardon is to restore him to his rights, civil and political.

Usury (No. 40).—Where a debt is made up of interest exceeding the legal rate, and seems to the Court to be usurious, the Court may order such usurious interest to be paid by instalments and fix the amount of such instalments at its discretion.

Municipal Code.—Nos. 44, 45, 46 amend the law in some minor matters.

7. NEWFOUNDLAND.

[*Contributed by* H. C. Gutteridge, Esq.]

Acts passed—33.

Foreign Fishing Vessels.—No. 1 is noteworthy as being the Act which has brought the Newfoundland Fisheries dispute to a head, and has led to a diplomatic crisis between the British and United States Governments. Broadly speaking, the object of the Act is to prevent United States fishing vessels from procuring bait and from employing colonial fishermen in colonial waters. Section 2 provides penalties for foreign fishing vessels found in colonial waters and having on board bait, ice, lines, seines, or

other fishing supplies purchased within the territorial limits of the Colony; or engaging or attempting to engage hands in the Colony. The presence of bait, etc., on board any foreign fishing vessel in colonial waters is to be deemed *primâ facie* evidence of offence committed. Sections 6 and 7 prohibit the employers of British subjects to fish in foreign vessels, and impose penalties on residents leaving the Colony to fish in foreign vessels. Certain officials are by s. 7 given the power to board and search any foreign fishing vessel found in colonial waters, and to examine her master on oath touching the cargo and voyage. This Act has, however, practically been rendered inoperative by the action of the Imperial Government in exercising their powers under s. 1 of the Imperial Act 59 Geo. III, c. 38, which enables the Crown by Order in Council to issue from time to time directions for securing to United States fishermen the rights granted to them by the Treaty of 1818.

The whole dispute has been referred to the Hague Tribunal, but in the meantime, by the Order in Council the serving of process on foreign vessels and the confiscation of such vessels or their tackle under the Act have been prohibited.

Chinese Immigration.—No. 2 regulates the immigration of persons of Chinese origin. It limits the number of Chinese who may be brought to the Colony by any vessel to one such immigrant for every fifty tons of tonnage. The Act also requires all Chinese immigrants to pay a head tax of $300. The Act is substantially a reproduction of a Canadian Statute (No. 8 of 1903).

Aliens.—No. 3 regulates the law with regard to aliens. It reproduces the Imperial Aliens Act, 1905, with a few slight modifications rendered necessary by local conditions.

Life Insurance.—No. 5 amends the law relating to Life Insurance Companies. It provides that no person or company shall carry on any life insurance business in the Colony without a licence from the Minister of Finance and Customs. No such licence is to be issued until securities to the value of $25,000 are deposited with the Minister, and this amount is to be increased if the liabilities of the depositor in the Colony exceed the deposit, or if the securities decline in value. Every company must furnish an annual statement of its affairs to the Minister, who is empowered to cause the agency in Newfoundland of each company to be visited at least once yearly, to inquire into the affairs of each company, and to value all Newfoundland policies at least once in every five years. The Act contains elaborate provisions with regard to the discontinuance of business by a licensed company and to the method adopted by a licensed company in computing the reserve necessary to be held in order to cover its liability to policy-holders.

Companies.—No. 6 amends the Companies Act, 1899. It reproduces ss. 14 to 19 inclusive of the Imperial Companies Act, 1900, and

practically repeals ss. 199 to 204 inclusive of the Imperial Companies Act, 1862. It further provides that in the distribution of assets on a winding-up the provisions of the Judicature Act, 1904, as to preferential payments, are to apply as if the company being wound up were a person declared insolvent under that Act.

Powers of Appointment.—No. 11 provides that no appointment made in exercise of any power to appoint real or personal property among several objects shall be invalid by reason of the exclusion of any object; unless the instrument creating the power shall contain a provision to that effect.

Railways.—No. 13 provides means for dealing with drunken or disorderly travellers and trespassers. Conductors or train servants may eject drunken persons and confiscate their liquor, and the railway companies are prohibited from selling tickets to persons under the influence of liquor. Summary penalties are provided for persons obstructing railway servants, or behaving in a disorderly manner, or trespassing, or being drunk on a railway.

Official Secrets.—No. 14 requires clerks in the public service to take an oath of secrecy, and provides penalties for divulging information.

Mines.—No. 15 is an Act respecting the regulation of mines. It reproduces several of the provisions contained in the Imperial Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58).

Dogs.—No. 16 enables the Postmaster-General to grant permits to mail couriers to keep dogs for the transport of mails, notwithstanding anything contained in the Keeping of Dogs Act, Consolidated Statutes (Second Series) No. 141.

Intoxicating Liquors.—No. 17 repeals No. 130 of the Consolidated Statutes (Second Series). It contains a number of interesting provisions. The granting of licences is entrusted to the stipendiary magistrates, except in the Labrador and in the district of St. John, where they are to be granted by a licensing Board, consisting partly of nominated and partly of ex-officio members. Licences are to be of two kinds, viz. wholesale and retail, but no new retail licences are to be granted until the total number of existing licences in any one place is reduced to a number bearing the proportion of one licence to two hundred adult male residents. No person holding a retail licence may sell more than two gallons of liquor at any one time to any one person, and, *vice versâ*, no person holding a wholesale licence may sell less than two gallons at any one time to any one person. Persons adulterating liquor are subjected to heavy penalties, and rendered incapable of again holding a licence. Constables, if authorized in writing by a stipendiary magistrate, are empowered to procure samples of liquor and submit the same to analysis. The sale of liquor to persons under 18 years of age, or to habitual drunkards, is forbidden. No licence-holder may exchange liquor for clothes, tools, fishing gear, household goods, or furniture. The employment on licensed premises of persons under 21 years of age, and of females

other than members of the licence-holder's family, is also prohibited. No liquor is to be carried in any ship engaged in fishing or trading (with the exception of sealing) beyond such quantity under four gallons as may be *bonâ fide* required for ship's stores. The sale of intoxicants on railway trains is forbidden, except on the cross-country passenger train known as the Bruce Express. As regards clubs, the Act reproduces Part III. of the Imperial Licensing Act, 1902, with a few slight modifications. No liquor is to be sold, given, or delivered to any Esquimaux or Mountaineer Indian, except for medicinal or sacramental purposes.

Motor Cars.—No. 18 reproduces the Imperial Motor Act, 1903, with the following modifications: The speed limit during daylight is twenty miles per hour, but after sunset it is ten miles per hour, and no car may be driven in or within one mile of any inhabited place at more than ten miles per hour. A person exceeding the speed limit may, in the discretion of the Court, be sentenced to imprisonment not exceeding one month. Racing or driving for wagers is prohibited.

Herring Fishery.—No. 22 amends 61 Vict. c. 3. It provides for the appointment of a "fisheries expert" to supervise the curing and packing of herring.

No. 22 is an Act designed to encourage the herring fishery. It provides for subsidies to persons engaging in the herring fisheries with drift nets, and employing on each vessel not less than four residents in the Colony for a continuous period of at least two months. It also grants a bounty on all Scotch-cured herring, cured and packed by residents in the Colony, and allows free entry to colonial ports for all vessels from the United Kingdom engaging in drift-net fishing in colonial waters. The Governor-General is empowered to send not more than ten colonial fishermen to Scotland, at the expense of the Colony, for instruction in drift-net fishing and curing and packing.

Game.—No. 20 empowers the Governor in Council to appoint a Game Preservation and Inland Fisheries Board, whose duty it shall be to make inquiries as to the preservation of game, birds, and animals, and the inland fisheries of the Colony.

Timber.—No. 28 restricts the erection of sawmills upon timber lands within three miles of the coast, the object of this Act being to preserve the timber for the use of the fisheries, shipbuilding, and for fencing and firewood.

Minor Acts:

Foreign Enlistment.—No. 4 amends No. 73 of the Consolidated Statutes, by repealing s. 2 and substituting another section enumerating the munitions of war, the exportation of which may be prohibited by proclamation. It repeals 3 Ed. VII. c. 4.

Dentistry.—No. 7 regulates the practice of dentistry.

Medicine.—No. 8 amends the Newfoundland Medical Act, 1896.

Wireless Telegraphy.—No. 9 confirms an agreement made between the Government and the Canadian Marconi Company. No. 31 provides that wireless stations shall only be worked under licence from the Postmaster-General, confirmed by the Governor in Council.

Submarine Cables.—No. 10 confirms an agreement made between the Government and the Commercial Cable Company of New York.

Education.—No. 12 amends the Education Act, 1903.

Prisons.—No. 19 amends No. 23 of the Consolidated Statutes.

Whaling.—No. 21 amends 2 Ed. VII. c. 11.

Harbours.—No. 23 regulates the management of the harbour of Port-aux-Basques.

Marine Engineers.—No. 24 repeals 4 Ed. VII. c. 8, and provides for the examination and certification of marine engineers. No steamer over 20 N.H.P. may go to sea without certified engineers.

Light Dues.—No. 25 exempts French fishing vessels from the payment of light dues.

Revenue.—No. 26 amends Schedule A of the Revenue Act, 1905. No. 33 makes an appropriation out of the Consolidated Fund for the different branches of the public service.

Crown Lands.—No. 27 amends the Crown Lands Act, 1903.

Accountants.—No. 29 amends the Accountants Act, 1905 (5 Ed. VII. c. 16).

Post Office.—No. 30 repeals s. 20 of the Post Office Act, 1891.

Pensions.—No. 32 grants pensions to certain retired officials.

8. BERMUDA.

[*Contributed by the* Hon. Reginald Gray, *Attorney-General.*]

1905

Acts passed—39.

The Session of 1905 was a prolific one, and several measures prepared by the Hon. H. C. Gollan, Chief Justice, were added to the Statute Book, among which may be mentioned the Supreme Court Act, the Evidence (Consolidation and Amendment) Act, and the Appeals Act.

Prisoners (No. 1).—This Act enables a prisoner under a first sentence of imprisonment for more than six months to earn, by industry and good conduct, remission of sentence not exceeding one-fourth in case of males, or one-third in the case of females. A prisoner under a second sentence which is for two years or upwards may, if his or her industry and conduct during the first year has been favourably reported on by the Keeper, earn remission of sentence in the same proportions as mentioned above. A prisoner sentenced a third time or oftener for two years or upwards cannot earn any remission of sentence. Regulations made under the Act adopt the mark system substantially as it exists in England.

Dockyard Port (No. 2).—For the first time in the history of the Colony a specific area of water has been appropriated as a mooring place and anchoring ground for His Majesty's ships. The Governor-in-Council is authorised to make regulations for the port, and the Admiralty can appoint a King's Harbour Master, on whom the Act confers considerable powers. The Admiralty is constituted the harbour authority for the port and the ship channel leading thereto from sea.

Judicature: Supreme Court (No. 4).—This Act, which amalgamates all the existing Colonial Courts under the title of the Supreme Court of Bermuda, contains five parts—Part I. dealing with the constitution of the Court, Part II. with jurisdiction and law, Part III. with sittings and distribution of business, Part IV. with the officers of the Court, with provisions as to the admission of barristers and attorneys, and Part V. fixes the date for the commencement of the Act and repeals numerous previous enactments.

Trading Stamps (No. 7).—For the purposes of this Act "trading stamp" is defined as "any stamp, ticket, coupon, label or other similar device, which will entitle the holder thereof on presentation thereof, either singly or in any definite number, to receive either directly from the vendor, or indirectly from any other person, money or goods." A trading stamp company was formed here which supplied to retail tradesmen adhesive stamps at a fixed rate, which were issued by the tradesmen to their cash customers, the number being proportionate to the amount of the purchase. The company undertook to deliver articles of an ornamental or useful description in exchange for specific numbers of stamps. Customers were deluded into the belief that by this means they received the equivalent to a cash discount of about 4 per cent., but by far the larger share of the percentage went to the company, the customer participating only in a minor degree. The Act requires trading stamps to have on them the name of the vendor and the cash value of the stamp, and makes them redeemable by the vendor in cash at their face value. The result has been that most customers cash their stamps with the vendor instead of exchanging them with the company for goods, and the latter is closing up its business.

Evidence (No. 20).—This Act, which contains sixty sections, consolidates and amends the previous statute law of the Colony on this subject. It is divided into four parts. Part I. contains interpretation clauses, Part II. deals with witnesses, Part III. with proof of documents, and Part IV. contains a few sections dealing with other matters.

Education: Scholarships (No. 21).—Under the will of the late Cecil J. Rhodes, Bermuda became entitled to an Oxford Scholarship. This Act establishes two Bermuda Scholarships of £150 each tenable for two years at some educational establishment out of the Colony, the object being to give candidates for the Rhodes Scholarship the advantage of two years' education abroad preparatory to their taking up the Oxford Scholarship. One of the qualifications of the Rhodes Scholarship is five years' education

in Bermuda between the ages of twelve and twenty. The local scholarship enables a youth to leave Bermuda at the age of seventeen and to enter Oxford at nineteen.

Appeals (No. 25).—This is a comprehensive measure providing a uniform mode of procedure in appeals from inferior Courts to the Supreme Court.

Marriage (No. 27).—This Act amends and consolidates previous enactments and deals with the solemnisation of marriages. "Incumbent" is defined as including the rector of any Church of England living, the Bishop of the diocese, the Archdeacon, and the Residentiary Canon of the Cathedral. "Minister" includes any clergyman or minister of any Christian body and an officer of the Salvation Army authorised by the proper authority of that body to perform marriages between members of that body. "Licensed minister" means a minister licensed by the Governor in Council to perform marriages. An incumbent or licensed minister may solemnise marriages after publication of banns or under a licence issued by the Governor. A marriage is null and void if both parties knowingly and wilfully acquiesce in its celebration under false names, or without due publication of banns, or without a licence duly issued, or by a person not empowered to celebrate marriages under the Act.

Health (No. 30).—This Act makes important amendments to the Health Acts, particularly with regard to the suppression of nuisances.

Medical Practitioners (No. 31).—Provision is made by this Act for the better registration of persons qualified to practise medicine or surgery. A register is to be kept by the Colonial Secretary, the first entries in which were the names of the medical men previously recognised under the Acts for payment of medical witnesses. The Governor in Council appoints a Medical Board to deal with new applications for registration. This Board examines the applicant's credentials, and can also examine him as to his competency and fitness, and if satisfied grants him a certificate which entitles him to registration on payment of a fee of £6. Provision is also made for the removal of names from the register for sufficient cause. Registered practitioners may recover reasonable charges for medical or surgical aid, and the cost of medicines and medical appliances.

Motor Cars (No. 33).—This Act regulates the speed of motor cars, the maximum limit being fixed at *ten* miles an hour, the reason given being the tortuous nature of most of the roads and the consequent danger to other vehicles.

1906.

Acts passed—31.

Agricultural Products: Inspection (No. 8).—This Act consolidates and amends previous legislation regulating inspection of certain kinds of agricultural produce before shipment abroad. Government inspectors examine

on the shipping dock not less than 10 per cent. of every lot deposited for shipment, and see that it is properly marked and graded according to size and quality. Any lot of produce considered unfit for shipment is repacked under the direction of the inspectors and the defective portions destroyed, the owner bearing the expense. Where an entire lot is condemned as altogether unfit for shipment, it is destroyed.

Criminal Law: Cruelty to Animals (No. 12).—This repeals a previous Act and increases the punishment for offences. "Animal" is defined as "any domestic animal, whether a quadruped or not," and "wild animal" as "any animal not being a domestic animal." The punishment for cruelty to any animal is imprisonment not exceeding three months, or a fine not exceeding £10, or both; and for cruelty to a wild animal in captivity is a month's imprisonment or a fine of £5. The Court may order the animal to be sold to pay custody expenses, fine or costs. Persons committing offences and not desisting when called on by a constable may be arrested without warrant. A search warrant may be issued to visit premises when there is reasonable cause to believe the Act is being violated. A person convicted may appeal to the Supreme Court.

Marriage (No. 16).—By the Marriage Act of 1905, which consolidated and amended the marriage laws of this Colony, those of the clergy who came under the designation "incumbent" as defined in the Act are allowed to celebrate marriages without being especially licensed for the purpose, whilst other ministers must obtain a licence. The present Act confers on naval and military chaplains similar privileges to those enjoyed by incumbents, where either party to the marriage is a member, or the son or daughter of a member, of His Majesty's sea or land forces.

Health (No. 20).—This Act authorises the General Board of Health to provide an isolation hospital for the reception of persons suffering from any contagious or infectious disease, the expense to be defrayed out of the general annual grant at the disposal of the Board. Under a previous Act every local board had a similar power, but the expense had to be assessed on the taxpayers of the district. A justice of the peace, with the consent of the medical officer of health, and on a certificate signed by a resident medical practitioner, may order the removal to the hospital of any person affected with infectious or contagious disease, and being without proper lodging or accommodation, or being on board any ship.

Customs: Tariff (No. 29).—The efforts of several years culminated in 1906 in the adoption of an improved financial system, and this is the first Customs Tariff Act, properly so called, which has ever been passed here, at all events within the last hundred years. It increases the import duties on some articles, chiefly on spirits, tobacco and cigars, but these have been so low in the past that the increase will hardly be felt. An interesting feature in the tariff is that the Colony has within the last few years imposed import duties on various articles with the view of protecting local industries. Among

these articles may be mentioned arrowroot, bananas, Easter lily bulbs, eggs, potatoes, and water-melons.

Appropriation (No. 31).—This Act for the first time in the history of the Colony makes specific appropriations in one Act for the general expenditure of the next financial year, except so far as such expenditure is provided for by other Acts. Salaries and some other grants for specific purposes are voted by Acts of limited duration which are from time to time continued for a few years.

X. THE WEST INDIES.

1. THE BAHAMAS.

[*Contributed by* HARCOURT MALCOLM, ESQ.]

Interpretation (No. 1).—By the Interpretation Act, 1907, the then existing Acts of Assembly with respect to the construction of, and for shortening the language used in Acts of Assembly were consolidated.

Clerical Errors (No. 2).—The Clerical Errors Correction Act, 1907, as its title implies, corrects various errors in certain Acts passed in 4, 5, and 6 Ed. VII.

Emigration (No. 3).—The Emigrant Labourers' Protection Act, 1907, secures to a labourer, as defined in the Act, the payment of wages in full in the currency of the Colony.

Protection of Workmen (No. 4).—The Truck Act, 1907, provides that the payment of workmen's wages shall be in the current coin of the Colony. No employer shall be allowed to set off or counterclaim in respect of any goods supplied to a workman, nor shall he contract with such workman as to the spending of his wages at any particular shop, etc. Any contravention of the provisions of this Act subjects the offender to a penalty.

Marine Products (No. 5).—The Marine Products Board Act, 1907, establishes a Marine Products Board to consist of seven members; lays down the duties of such Board, and names the subjects on which the Board may make rules and regulations with the approval of the Governor in Council. The Act is to continue in force for three years, and a sum not exceeding three hundred pounds is to be paid to the Board annually for the purposes of the Act. The Sponge and Turtle Fisheries Board Act, 1904, is repealed thereby.

Medical (No. 6).—The Out-Island Medical Act, 1907, consolidates previous Acts and amends the qualification of Out-Island Public Physicians.

Mail Service (No. 7).—The Interinsular Mails Act, 1907, repeals and takes the place of the Interinsular Mails Act, 1899, and provides a subsidy of £3,000. The annual expenditure, however, is not to exceed £2,000

unless the service is performed by a steam vessel or one of superior speed or accommodation.

Electric Light (No. 8).—The Electric Light Act, 1907, provides for the establishment of a "full and sufficient supply of electricity for public and private use," within a certain specified area. The Governor in Council is to declare what is to be the "Lighting Authority." The sum of £12,000 is provided for carrying into effect the objects of the Act. Provision is also made for the appointment of officers, etc., at such salaries as may be fixed by the Lighting Authority.

Marriages (No. 9).—The Marriage Act, 1907, legalizes the marriage of a man with his deceased wife's sister. No minister of religion is compelled to solemnise any such marriage.

Telephones (No. 10).—The Telephone Extension Act, 1907, amends the Telephone Act, 1906, by increasing the grant from £1,200 to £2,400, and providing for six operators instead of three.

Education (No. 11).—The Education (Amendment) Act, 1907, increases the educational grant from £4,700 to £5,000.

Public Works (No. 12).—The Board of Works (New Providence) Act, 1907, consolidates and amends all the present Acts relating to the Board of Public Works for the Island of New Providence.

Dogs (No. 13).—The Dog Licence Act, 1907, is a consolidating and amending Act. The Act fixes an age limit, and the Governor in Council may extend its provisions to Out-Island Districts.

Hotel and Steam Service (No. 14).—The Hotel and Steam Service Amendment Act, 1907, gives the Governor in Council power to reduce the number of voyages to be performed by the steamship service under "The Hotel and Steam Service Act, 1898," and provides a corresponding reduction in the amount of the subsidy payable. The provisions of the Act came into operation on April 1, 1907.

Public Establishments (No. 15).—The Public Establishments Amendment Act, 1907, amends the Public Establishments Act, 1889, by empowering the Governor in Council to transfer resident justices from one district or station to another for any period. Formerly the transfer could not exceed twelve months.

Public Establishments (No. 16).—The Public Establishments (Amendment) Act, 1907, provides for the establishment of an assistant clerk in the office of the Civil Engineer and Surveyor General at an annual salary of £80.

Polling Divisions (No. 17).—A previous Act of Assembly (4 and 5 Ed. VII. c. 10) had divided the southern district of the Island of New Providence into two polling divisions, and this Act makes provisions for a list of voters for each division.

Salaries (No. 18).—The Post-Office Salaries Act, 1907, increases the salaries of the chief, second, and third clerks of this Department.

Personal Allowances (Nos. 19, 21).—These Acts grant personal allowances to James Austin Thompson, postmaster, and James H. Lightbourn, Junior, clerk in the Registrar of Records Office.

Public Establishments (No. 20).—The Post-Office Fourth Clerks Act, 1907, establishes a fourth clerk in the Post-office Department at an annual salary of £72.

Expiring Laws (No. 22).—The Expiring Laws Continuance Act, 1907, continues for one year the Act 1 Ed. VII. c. 20, relating to the Board of Works for the Island of New Providence.

Street (No. 23).—The Trinity Place Act, 1907, changes name of Crown Alley Nassau to Trinity Place.

Supply (No. 24).—The Appropriation Act, 1907, grants the sum of £28,774 17*s.* 9*d.* for the performance of Public Works, etc., and for the reimbursement of various payments, etc.

2. BARBADOS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1906)—32.[1]

Cotton Industry and Trade (No. 1).—The Sale of Cotton Act, 1906, requires the vestry of each parish to appoint, with the approval of the Governor-in-Executive Committee, an Inspector of Cotton to discharge the duties imposed by the Act as to estate returns of cotton planted, the issue of certificates to vendors of cotton, and the grant of licences to purchasers of cotton. This Act is amended by Acts Nos. 15 and 30, 1906.

Distress for Taxes (No. 4).—The Vestries (Amendment) Act, 1906, enables the actual owners of goods distrained on for arrears of taxes to claim and obtain possession of the same by proceedings before the police magistrate of the district.

Chancery Procedure (No. 5).—The Chancery Act, 1906, consolidates and repeals the Chancery Acts of the Colony, with a saving as regards existing rules, orders, and byelaws not specifically repealed or superseded. The Act contains 112 sections and a Schedule of the Acts repealed. The constitution and jurisdiction of the Court, its procedure and practice in actions, both before and after decrees and orders, including sales of land, taxing accounts, appointment of receivers, injunctions, ranking and marshalling liens and incumbrances, taking evidence, completing sales of land by conveyance of the Master in Chancery, are set forth.

Light Railways (No. 6).—The Barbados Light Railway, Limited, Act, 1906, grants an annual subsidy of £2,000 to the railway for ten years from September 1905, and requires the Governor-in-Executive Committee to

[1] Acts are passed by the Governor, the Council, and the Assembly of the Island, and are numbered consecutively for the calendar year.

appoint an official inspector to report at least twice a year on the condition of the line of railway, the stations, and the rolling stock to the Governor-in-Executive Committee. Failing execution of repairs found necessary, the subsidy is to be suspended. The Act contains, in 187 sections and 2 schedules, powers, rules, and regulations for the administration of the railway.

Agricultural Aid (No. 11).—The Plantations Further-in-Aid Act, 1906, authorises the Executive Committee to borrow a further sum of £200,000, or less, in addition to and for like purposes as the sums borrowed under the Plantation-in-Aid Acts, 1902 to 1905, and the sum so borrowed is to be repaid before August 31, 1907. The money borrowed is charged upon the securities held by the Government of Barbados for advances made pursuant to the said Acts, and upon any balance of the imperial grant which is remaining after payment thereout of the sums payable under the provisions of the same Acts. The amount is to be applied in loans to owners and receivers of plantations, subject to the provisions of the Act as to misapplications by owners of advances and to the priority of loans under the Act over all other liens and charges against the plantation, except those created under the Plantations-in-Aid Acts, 1902 to 1905, and over all liens and charges against the crop of 1907, except advances made before June 1, 1906, which had been expended for the purposes therein mentioned, and advances under the Agricultural Aids Acts upon certificates dated on or after June 1, 1906, and before loans under this Act.

Highways (No. 12).—The Highways Amendment Act, 1906, imposes licence duties upon the wheels of vehicles and cycles, and upon horses, mules, and asses.

Constables (No. 13).—The Parish Constables (Further Amendment) Act, 1906, provides for the payment to constables of two shillings for every offender legally apprehended and conveyed to prison, and for each day's attendance in court to give evidence; but the constable is not entitled to such payment if the complaint be dismissed.

Tariff on Kerosine Oil (No. 17).—The Custom Tariff (Amendment) Act, 1906, exempts from duty kerosine oil, or any of the bye-products of petroleum to be used exclusively as fuel in oil or motor engines.

Public Moneys (No. 19).—The Colonial Treasurer's Amendment Act, 1906, amends the principal Act, 1891 (49), and requires the Treasurer to deposit all public moneys over and above £8,500 in such manner as the Governor-in-Executive Committee, with approval of the Assembly, shall direct.

Libel (No. 20).—The Libel and Defamatory Words (Amendment) Act, 1906, makes it unnecessary to set out in any indictment against the publisher of any obscene libel, the obscene passages; but it is made sufficient for the purpose of the proceedings to deposit the book, newspaper, or other document containing the alleged libel with particulars of reference thereto.

Bay Rum (No. 22).—The Rum Duty Amendment Act, 1906, exempts spirits converted into bay rum from the payment of excise duty, and bay

oil imported for being converted into bay rum from import duty: it subjects the manufacture of bay rum to revenue regulations and to a revenue duty equal to the import duty on bay rum, with allowance of a drawback on export.

Savings Bank (No. 23).—The Savings Bank (Amendment) Act, 1906, raises the rate of interest to £2¾ per cent. from July 1, 1906.

Settled Estates (No. 26).—The Settled Estates (Amendment) Act, 1906, makes, for the purposes of the principal Act, land to which an infant is absolutely entitled in possession, settled land, and the infant, tenant for life. The powers of a tenant for life under the principal Act being an infant may be exercised on his behalf by the trustees of the settlement, and, failing any such, by the Court.

Railway Fires (No. 28).—The Railway Fires Act, 1906, regulates the liability for damage caused to agricultural land or the crops thereon by fire, caused by sparks from engines used on the railway.

Postage Rates (No. 31).—The Post Office Amendment Act, 1906, reduces the postage on inland letters, except from or to the United Kingdom, to one penny per ounce, and on book packets, patterns, and sample post to one half-penny per four ounces.

3. BRITISH GUIANA.

[*Contributed by* Sir Thomas Rayner, *Attorney-General.*]

Of the fifteen Ordinances passed during the year ten are public general statutes and five may be classed as private or local statutes.

The following are the general public Ordinances:—

Customs Duties (No. 1) and **Tax** (No. 2) are the two Ordinances passed annually by the Combined Court to provide the revenue for the next ensuing financial year, under the authority of which the customs duties and inland revenue are collected and levied.

Food and Drugs (No. 3).—This Ordinance amends the Sale of Food and Drugs Ordinance, 1892, by prescribing standards of purity to which a number of articles in ordinary daily use, such as butter, milk, coffee, tea, flour, bread, etc., must conform, and to which, if they do conform, no proceedings for adulteration in respect of them can be maintained. The standards are taken from similar legislation in the United States, and were enacted in order to settle questions which frequently arise in proceedings for adulteration as to whether a particular article is or is not "of the nature, substance, and quality demanded by the purchaser."

Roads (No. 4).—This amends an Ordinance passed in the previous year (No. 13 of 1905), by enacting new schedules of roads for the upkeep of which the Government is responsible, and by giving the Governor in Council power to alter and amend the schedules as occasion may require.

Destitute and Criminal Immigrants (No. 5).—This Ordinance amends one passed in 1896 (No. 4 of 1896) for the purpose of excluding undesirable immigrants arriving in the Colony, by enacting provisions as to criminals who have been convicted in other British Colonies and giving power to exclude them in the same manner as alien criminals can be under an Ordinance passed in 1886 (No. 2 of 1886).

Education (No. 9).—This Ordinance was passed to facilitate proceedings under the Elementary Education Ordinance, 1876 (No. 2 of 1876), against parents for neglecting to send their children to school, and is taken from similar provisions in ss. 24 and 25 of the English Elementary Education Act, 1873 (36 & 37 Vict. c. 86).

Fraudulent Debtors (No. 10).—This Ordinance amends the criminal law of the Colony relating to bankruptcy by making it a misdemeanour for an insolvent trader not to have kept proper books of account.

Wills (No. 12).—This Ordinance, probably the most important passed during the year, amends the law relating to wills by abolishing certain restrictions on disposing power imposed by the Roman-Dutch law, and generally assimilates the law on the subject to that of England. So far as the making of a will is concerned, the Roman-Dutch law is now practically abrogated in this Colony, and English law substituted, and in this connection it may be interesting to note that the *lex hac edictali* is in terms repealed by s. 10 of the Ordinance, a British Legislature thus repealing a Roman Statute.

Militia Band (No. 14).—This Ordinance provides a system of deferred pay for the band of the militia force similar to that now obtaining for the police force.

The members of the band are the only part of the militia force who devote their whole time to their work and who are always under military discipline, and as they are much in the same position as policemen, this Ordinance gives them the same rights to deferred pay as policemen.

Statute Law Revision (No. 15).—This is an "omnibus" Ordinance, which makes a number of small amendments in various Ordinances, and which are grouped together into one Ordinance, to avoid the necessity of passing a number of short amending Ordinances. An Ordinance of this character has been passed annually for the last twelve years, but as it conflicts with a paragraph in the Royal Instructions, which requires that "each different matter is to be provided for by a different law, without intermixing in one and the same law such things as have no proper relation to each other," the Government has decided not to introduce into the Legislature any more Bills of this nature.

Of the private or local Ordinances, four of them relate to public bodies incorporated for the purpose of carrying out or maintaining works of public utility in a particular locality. One of them (No. 7) constitutes a body of commissioners charged with the maintenance of the sea defences of the county of Demerara, with power to raise money for the purpose and to levy

assessments upon the proprietors of land in the district. (As the coast-line of this Colony is below the sea level, an expensive system of sea defences has to be maintained along the coast.)

Another Ordinance (No. 8) constitutes a body of commissioners charged with maintaining a canal through which a number of plantations, named in it, receive their water from a water conservancy scheme established under another Ordinance passed in 1884 (No. 12 of 1884).

The other two Ordinances referred to amend Ordinances already passed, constituting bodies of commissioners for similar purposes, one (No. 11) for a water-supply scheme, and the other (No. 13) for a drainage scheme.

The remaining Ordinance (No. 6) vests in the Colony the title to a piece of land, the legal title to which was in doubt, though the Government was in possession and no one disputed its right.

The above five Ordinances were dealt with by the Legislature under Standing Orders which apply to any Bill intended to benefit or affect private persons, and which enables all persons whose interest may be in any way affected to be heard in opposition to it. Beyond these Standing Orders, no difference is made in the procedure between public and private Bills.

The annual volume of the Ordinances for the year is for the first time issued in the same form as the annual volumes of the English Statutes, except that no distinction is made between public and private Ordinances, and the private and local Ordinances are numbered and printed along with the public ones. A table of the titles of all the Ordinances passed is prefixed to the volume and a table stating the effect of the year's legislation upon former Ordinances, and an index is added at the end. The size of the page has been reduced to that of the English Statutes, and the volume is thus handier and more convenient for use than the volumes issued in former years.

4. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—14.[1]

Public Health: *Destruction of Mosquitoes* (No. 1).—The Mosquito Destruction Ordinance, 1906, has application to the town of Belize and to such other towns and areas as the Governor in Council may order, and thereupon all cisterns, vats, tanks, barrels, buckets, or other vessels for the storage of water, and all water in wells, ponds, pools, or basins in which mosquitoes can breed are to be protected, or otherwise rendered secure from mosquitoes by the means and appliances specified in the Ordinance. The necessary powers, rules, and regulations for giving effect to the methods for the destruction of mosquitoes are contained in the Ordinance.

[1] Ordinances are passed by the Governor, with the advice and consent of the Legislative Council, and are numbered consecutively for the calendar year.

Telegraph Lines (No. 11).—The Telegraph Ordinance, 1906, empowers the Governor to authorise the construction of telegraph lines and to appoint officials to superintend the construction, maintenance, and management, under the directions of the Governor, of all telegraph lines. Powers to acquire land for telegraph purposes, to erect posts and supports on private land, and the procedure in respect of claims for compensation, are set out in the Ordinance.

Licensing (No. 13).—The Belize Trades Licensing Ordinance, 1906, came into operation on January 1, 1907, and rendered persons carrying on a "dutiable business," as defined by the Ordinance, liable to licence duties based on the annual value of the premises wherein the business was carried on.

Various Rules and Regulations made by the Governor in Council, Board of Education, and District Boards were promulgated during the year, and are included in the collection of the Ordinances printed at the Government Printing Office, Belize.

5. JAMAICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

Laws passed—39.

Customs and Excise.—Law 3 of 1905, which added a temporary surtax of 6 per cent. to all the import duties, is repealed by Law 1.

Law 4 provides that goods imported free under the Customs Laws (for the use of the Governor or the Military Authorities) shall not be sold or transferred without notice to the Collector-General, and payment of the duties.

The import duty on matches, which was subjected to a surtax by Law 6 of 1905, is fixed at 1*s.* 9*d.* per twelve dozen boxes of fifty sticks each.

Additional requirements are made with respect to the excise duty on tobacco by Law No. 27. Every manufacturer must make a monthly return of the amount of tobacco, cigars, and cigarettes, respectively, manufactured and removed from the factory, and pay the duty on the amount removed.

Law Officers.—The office of Solicitor-General is abolished (No. 7), his place being taken by an assistant to the Attorney-General, who is to have all the powers and privileges of the Attorney-General in respect of criminal prosecutions. It is evidently expected that this assistant may be a member of the local bar and in partnership, as it is provided that his partner or partners must not appear or act for accused persons in criminal cases.

Produce Protection.—The Law of 1903 (see Journal, N.S. xiv., p. 462), requiring traders in the specified articles of island produce to take out licences, so as to restrain the sales of stolen produce, is further developed by a Law (No. 9), requiring all persons exporting produce in closed packages to use a trade mark and to affix it to every package.

Cayman Islands.—These islands, which are a dependency of Jamaica, with a population of about 4,000, not 1,000 of whom are white, have a modified Constitution accorded to them by an Imperial Act of 1863 (26 & 27 Vict. c. 31), the local legislature being the "justices and vestry"—albeit, Jamaica may legislate for the islands. By certain Laws, specified Jamaica laws have been applied to them. Doubts having arisen whether the subsequent repeal of certain of these laws in Jamaica operated to repeal them in the Caymans, it is now (Law 13) enacted that any repeal or amendment of such laws is to have this operation.

Rating.—All houses used for educational or charitable purposes are exempted from poor rate.

Succession.—If an intestate dies, whether with or without issue, leaving a widow and real or personal property not exceeding £50 in value, the whole goes to the widow (Law 17).

Where an intestate's property exceeds £50, the widow is entitled to £50 absolutely, this charge being borne by the real and personal representatives proportionately. The right is in addition and without prejudice to her right to share in the residue.

Protection of Women.—Law 26 is a measure for protection of women and girls, closely following the Criminal Law Amendment Act (United Kingdom).

Indian Immigrants.—The right of an Indian immigrant to commute his claim to a back passage for a grant of land is taken away by Law 29.

Dealers in Metal.—It is declared to be unlawful for any dealer in old metals to receive any less quantity than 56 lb. of either lead, tin, zinc, copper, aluminium, or any alloy of these, except by permission of an Inspector of Police.

Companies.—Three Laws (34, 35, and 36) introduce a considerable number of amendments of Company Law, following those recently made in the United Kingdom, chiefly with respect to modification of memorandum, winding-up, and arrangements between creditors and shareholders.

6. TURK'S AND CAICOS ISLANDS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—2.[1]

The two Ordinances passed in 1906 were Appropriation Ordinances, 1905 and 1907.

[1] Ordinances are passed by the Legislative Board, and are signed by the President and Clerk of the Board.

7. TRINIDAD AND TOBAGO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1906)—30.[1]

Public Water Supply (No. 1).—The District Waterworks (Amendment) Ordinance, 1906, provides for the prompt recovery of rates by the Water Authority from occupiers of premises by distress, and sale of the tenements on which rates are in arrear, and the amount of rates in arrear at expiration of three months after becoming due is increased 10 per cent.

Elementary Education (No. 2).—The Elementary Education Ordinance, 1906, attaches to managers of Assisted schools the same duties as are prescribed by the Ordinance for managers of Government schools, and requires them to meet quarterly for school business. Teachers and persons deriving any profit from an Assisted school are not to be managers. Managers of an Assisted school connected with any religious denomination are to be appointed and retired by the head, or governing body of such religious denomination, and the Board of Education may retire any manager. All appointments and retirements of managers are to be notified to the Board of Education.

Savings Banks (No. 5).—The Savings Bank Ordinance, 1906, provides for the transfer of deposits between the Post Office Savings Banks in the United Kingdom and the Government Savings Bank in the Colony.

Public Officers' Guarantees (No. 9).—The Public Officers' Guarantee Fund, 1906, establishes a Guarantee Fund, under the management of three Directors, appointed by the Governor, and empowers the Receiver-General to collect funds from officers contributing to the Fund, and deduct same from their salaries. The Governor can require public officers to give security and determine the amount thereof, and their contribution to the Fund is to be 1 per cent. of such amount. Various provisions are made as to reduction and adjustment of contributions by officers, the recovery of money from defaulters, and payments of claims.

Asphalt Industry (No. 10).—The Asphalt Industry Regulation Ordinance, 1906, subjects owners of all asphalt-bearing lands in Trinidad to the powers vested in the Inspector of Mines appointed under the Ordinance, and to the regulations therein contained for the purpose of preventing injury as between adjoining owners from asphalt excavations and settling claims arising therefrom. The provisions of the Ordinance are not to apply to the Pitch Lake until the expiration of the existing Crown lease in respect thereof, Schedule I containing the Regulations and Schedule II the Forms. Under

[1] Ordinances are made by the Governor, with the advice and consent of the Legislative Council, and public and private Ordinances are numbered consecutively for the calendar year.

the Regulations excavations must in no case be within two feet of the boundary line of the property.

Constabulary (No. 11).—The Supplemental Constabulary Ordinance, 1906, establishes, in addition to the Constabulary Force for the Colony, two other bodies, viz.: A Rural Constabulary and an Estate Constabulary: these two bodies are referred to as the Supplemental Constabulary. The command and superintendence are given to the Inspector-General, and the duties, numbers, distribution, and powers are prescribed by the Ordinance.

Markets (No. 12).—The Port-of-Spain Markets Ordinance, 1906, empowers the Town Commissioners to appoint places to be public markets, construct market-houses and other buildings, and set apart any land belonging to them, or lease any necessary land, for the purposes of the Ordinance. The Town Commissioners are empowered to make byelaws for the regulation of the markets.

Industrial Education (No. 14).—The Industrial Training Ordinance, 1906, empowers the parents, or other persons having charge of boys above fourteen and under eighteen years of age, to bind them to be apprentices, for any term under five years, in various trades. The Ordinance establishes and incorporates the Board of Industrial Training of Trinidad and Tobago, with certain prescribed duties and powers in relation to the industrial and technical training of the apprentices.

Juries (No. 15).—The Jury Ordinance, 1906, amends and is consolidated with the Jury Ordinance, No. 33. In cases of murder and treason the Judge presiding is empowered to discharge the jury without verdict after three hours' retirement. Except in cases of trial for murder and treason, special juries shall consist of nine jurymen.

Firearms (No. 16).—The Firearms Ordinance, 1906, makes it unlawful for any person other than those in the Naval or Military Service of the Crown, or in the Local Forces of the Colony, to carry or possess firearms, or deal in firearms, or carry on the trade of a gunsmith, without a licence pursuant to the Ordinance.

Food Importation (No. 18).—The Importation of Food Ordinance, 1906, applies to every article intended for the food or drink of man, and gives power to the Collector of Customs to detain, examine, and destroy food found to be unsound, without compensation. Regulations are to be made by the Governor-in-Executive Committee for carrying out the provisions of the Ordinance, which is only to come into and remain in force by proclamation published in the *Royal Gazette*.

Agricultural Loans (No. 19).—The Agricultural Produce (Advance) Ordinance, 1906, provides that where land with growing crops and the produce thereof is mortgaged, the crops when severed from the land and produce shall not be deemed personal chattels within the meaning of the Bills of Sale Ordinance, No. 63, but shall be deemed to be lawfully mortgaged. Mortgages of plantations may include sugars made from canes purchased by

the mortgagor from farmers during the continuance of the mortgage. Instruments of mortgage duly executed are to be registered in the Colony. Mortgagors in possession delivering mortgaged crops or produce under any sale, pledge, or other disposition to any persons receiving the same in good faith, and without notice of mortgage, are to be deemed as delivering with consent of the mortgagee.

Traffic Regulation (No. 21).—The Streets and Roads Regulation Amending Ordinance, 1906, extends the meaning of the words "hackney-carriage," and "vehicle," in the principal Ordinances to include, *inter alia*, motor-cars, bicycles, and tricycles.

Industrial Schools (No. 23).—The Industrial Schools Ordinance, 1906, empowers any Stipendiary Magistrate, on the request of the managers of an industrial school, to extend the period of detention of persons sent to the school for such term as the Justice may deem expedient up to the age of eighteen years.

Solicitors (No. 25).—The Solicitors Ordinance, 1906, enables articled clerks to solicitors in England, who have passed in England the Intermediate Examination, but who by illness or want of means are prevented completing their articles in England, to have, under the provisions of the Ordinance, their articles transferred to a solicitor in the Colony. The Ordinance prescribes the conditions under which a solicitor can become a certified conveyancer.

Agricultural Science (No. 48).—the Agricultural Society Ordinance, 1906, establishes and incorporates the Agricultural Society of Trinidad and Tobago for the dissemination of agricultural knowledge, and the consideration, encouragement, and advancement of all branches of agriculture in the Colony.

8. WINDWARD ISLANDS.

(i) GRENADA.

[*Contributed by* Sir Charles J. Tarring, *ex-Chief Justice of Grenada.*]

Ordinances passed—15.

Education.—Two of the Ordinances dealt with the following subjects: The first (No. 2) dissolved and abolished the incorporation of the governing bodies of the Grammar School and the Victoria Girls' High School, and incorporated a Board of Directors of Secondary Education, transferring to it all personal property and all pecuniary liabilities attaching thereto previously vested in the dissolved corporations, and vesting in the Governor the house and premises of the Victoria Girls' High School with the furniture and fittings thereof. The Board of Directors is to consist of the Chief Justice, the Colonial Secretary, the Inspector of Schools, and the heads of the Anglican

Roman Catholic, and Wesleyan denominations and of the Church of Scotland, together with not more than seven unofficial directors nominated by the Governor for two years, of whom at least three must be members of the Board of Education. A schedule to the Ordinance sets out a scheme for the management and direction of secondary education.

Ordinance No. 12 consolidates and amends the law relating to public primary education, repealing the previous legislation on the subject. The Board of Education already established is to continue to exist, and is to consist of the Governor as President and of not less than ten members to be appointed by the Governor for two years, of whom one-half are to be Roman Catholics. An Inspector and Assistant Inspector of Schools and a Secretary are to be appointed by the Governor. The powers and functions of the Board are defined. The primary schools are classified as either Government schools, maintained and managed at the entire cost of the Colony; or grant-in-aid schools, receiving, under specified conditions, grants of public money for salaries of teachers, the supply and maintenance of furniture and materials, and for keeping the school buildings in repair. The religious difficulty is met by providing for religious instruction on separate days and hours in each week being given in Government schools by the ministers of the various denominations or their substitutes appointed in writing; in grant-in-aid schools by the minister (or a duly appointed substitute) of the denomination to which the manager belongs to every pupil whose parent claims to belong to that denomination at the beginning or at the end of each day. All ministers of religion, or their substitutes, desiring to afford religious instruction to pupils of their own persuasion have free access to all schools subject to approved rules. The master or head teacher of every school is to keep posted in the schoolroom a list of pupils classified together under separate heads according to their several religious denominations; and to prohibit pupils attending any religious instruction other than that of their denomination so determined. Under certain conditions names may be transferred from one denomination to another in the lists. Education is made compulsory for all children between six and twelve years of age except where there is a reasonable excuse as defined.

The **Grand Etang Forest Reserve** and the **Forestry** Ordinances (Nos. 5 and 13) provide for the preservation of forest growth on the mountains and the protection of the sources of water supply in the Colony by, in the first case, creating a Grand Etang forest reserve and constituting it Crown land; and in the second case establishing a Forestry Board constituted of two officials, and not less than six unofficial members to be appointed by the Governor, the unofficial members to be nominated by the District Boards of Grenada and the town authority of Carriacou; other unofficial members may be appointed by the Governor, of whom two may be nominated by the Agricultural and Commercial Society of Grenada. The official members are to be the executive officers of the Board. The Board is to determine

upon and report to the Government what lands should be constituted rain or forest reserves, and what estates should be acquired for the purpose, issue bulletins of instruction concerning forestry, and draft schemes for the protection of forest growth; and recommend landed proprietors to the Governor for appointment as forest guards. The Board may by resolution provisionally declare an estate or part thereof to be a rain reserve, or under defined conditions a forest reserve. Such resolutions are to be published in the *Gazette* and at least one newspaper circulating in the Colony, with notice that any proposed scheme for reforestation with plans, etc., can be inspected at the Colonial Secretary's office or other place for three calendar months after date. After the expiration of the three months the Governor in Council may approve, vary, or rescind a resolution or part thereof. If he approve he may issue an Order-in-Council finally constituting the reserve and direct the necessary works to be executed. Provision is made for objection by interested persons and compensation of owners of lands, and for the exemption of lands under cultivation, clearings, and pasture lands. Charcoal-burning and tethering of stock other than the landowner's or occupier's is prohibited, and timber-felling is regulated within a reserve. The mode of carrying out schemes of reforestation either by the owner of the estate or by the Government is laid down. Rules and bye-laws are to be made by the Board; and penalties for offences against the Ordinance are provided.

A **Plant Protection** Ordinance (No. 7) aims at preventing the introduction of diseases of plants into the Colony; and a **Cocoa and Nutmegs (Amendment)** Ordinance (No. 8) was passed in the interests of the staple industries of the Colony.

The **Public Officers' Guarantee Fund** Ordinance (No. 11) establishes a fund out of contributions to be made by officers required to give security for the faithful performance of their duties, out of which amounts certified by the Auditor to be due by officers in default are to be paid. Two directors of the fund are to be appointed by the Governor during pleasure from the public officers of the Colony. Refunds are allowed to contributing officers under certain circumstances. An annual statement of the working of the fund is to be laid before the Legislative Council by the directors.

The **Licences** Ordinance (No. 14) establishes a scale of fees for keeping horses, dogs (in towns), carriages, carts, coasting vessels, boats, bicycles or tricycles, and firearms; and for carrying on certain trades; and provides for a tariff of charges to be taken by boatmen, porters, and livery-stable keepers.

(ii.) ST. LUCIA.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1906)—6.[1]

Contagious Diseases (Animals) (No. 1).—The Contagious Diseases (Animals) Ordinance, 1906, empowers the Governor in Council to declare any part of the Colony to be infected with disease, and also to extend the application of the Ordinance to other animals and diseases than those specified therein. As regards areas made subject to the Ordinance, the rules and regulations for the prevention and checking of disease come into operation, with compulsory powers and penalties enforceable by the police.

Telephones (No. 4).—The Telephone Ordinance, 1896, Amendment Ordinance, 1906, authorises, under certain conditions, the erection on private lands, and at the side of and across public roads and streets, of posts and telephones.

Savings Bank (No. 5).—The Savings Bank Ordinance, 1903, Amendment Ordinance, 1906, enables any depositor not under the age of sixteen, by writing under his hand, to nominate any person of the full age of twenty-one years (not being an officer of the bank—unless such officer be one of the relatives therein enumerated), to whom any deposit not exceeding £50 may be paid at the depositor's decease, with power to revoke or vary such nomination, and on proof of the death of the nominator the bank manager shall pay to the nominee the sum due to the deceased, provided it does not exceed £50. In case of the death intestate of a depositor entitled to a deposit not exceeding £30, and without having made a nomination, the sum may be divided among such persons appearing to the Governor in Council to have either a legal or a just, equitable, or moral claim to the same.

Payments made pursuant to the Ordinance are a good discharge to the Government.

Paupers (No. 6).—The Pauper Asylum Ordinance, 1906, enables the Governor in Council to set apart buildings as Pauper Asylums for reception of paupers maintained out of moneys voted by the Legislative Council, and to appoint an Asylum Staff, a Committee of Visitors, and to make Rules.

Various Orders-in-Council, pursuant to Local Ordinances, were promulgated during the year, and are included in the collection of Ordinances for 1906, printed at the Government Printing Office, Castries.

[1] Ordinances are made by the Governor of the Windward Islands (St. Lucia, St. Vincent, and Grenada), with the advice and consent of the Legislative Council of St. Lucia.

(iii) ST. VINCENT.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—17.[1]

Public Works (No. 1).—The Lands (Acquisition for Public Purposes) Ordinance, 1906, gives to the Governor a compulsory power to take land for public works, and constitutes a Board of Arbitration for settlement of questions of compensation.

Crown Lands (No. 2).—The Crown Lands Ordinance, 1906, enables the Governor to appoint a Superintendent and a Surveyor of Crown Lands vested in the Crown or the Governor for the public uses of the Colony, and to make regulations in respect thereof as to the survey of the boundaries, the management, sale, and letting, the prevention of squatting and trespass, the occupation, allotment, and survey; and vests, subject to the regulations, the administration and disposal thereof in the Governor, and creates the necessary procedure for offences under the Ordinance.

Land Surveyors (No. 4).—The Land Surveyors Ordinance, 1906, requires all Land Surveyors to take out a licence to practise, and regulates the procedure in respect of persons desirous of obtaining a certificate of qualification.

Charcoal (No. 5).—The Charcoal Ordinance, 1906, regulates the manufacture of charcoal in the Island.

Cemeteries (No. 6).—The Public Cemeteries Ordinance Act, 1906, gives the Governor in Council power to make rules for the enclosure, use, government, custody, and otherwise of all public cemeteries.

Evidence (No. 8).—The Criminal Evidence Ordinance, 1906, enables every person charged with an offence, and the wife or husband, to be a witness, subject to certain provisions contained in the Ordinance.

Disease in Plants (No. 9).—The Importation of Plant Diseases Prevention Ordinance, 1906, repeals a like Ordinance of 1905, and gives power to the Governor in Council to prohibit the importation of plants likely to introduce plant disease into the Colony.

Agricultural Produce (No. 11).—The Agricultural Produce Protection Ordinance, 1906, applies to cocoa, nutmeg, mace, cotton, and makes it unlawful for any person to trade in such produce without a licence, which is to be granted subject to the condition and provision in the Ordinance.

Druggists (No. 12).—The Medical Registration Ordinance, 1906, requires all druggists' assistants and dispensers to have a certificate of qualification from the Medical Board, and imposes penalties upon unqualified persons dispensing drugs.

[1] Ordinances are passed by the Governor, with the advice and consent of the Legislative Council, and are numbered consecutively for the current year.

Ports (No. 13).—The Port Officers Ordinance, 1906, enables the Governor in Council to make regulations for the guidance of port officers in the performance of their duties, and for the navigation, anchorage, and all matters relating to ships in, and the management of ports.

Passenger Boats (No. 14).—The Passenger Boats Ordinance, 1906, requires every boat, canoe, ship, or other vessel, before being used by passengers, to be licensed in accordance with the provisions and regulations contained in the Ordinance.

Married Women (No. 15).—The Married Women's Property Ordinance, 1906, enables a married woman, in accordance with the provisions of the Ordinance, to acquire, hold, and by will or otherwise, dispose of any real or personal property as her separate property, as if a *feme sole*, without the intervention of a trustee; and in respect of her separate property to contract, sue, and be sued, either in contract or tort, as if a *feme sole*, without joinder of her husband.

9. LEEWARD ISLANDS.

[*Contributed by* ALEXANDER MANSON, ESQ.]

FEDERAL COLONY.

Acts of the General Legislative Council passed—10.

Supply.—Nos. 1, 2, 9 are Supply Acts.

Patents (No. 3).—Three old Acts are repealed, and this law (of 52 sections) is to come into force when notified in the *Gazette*. The provisions are necessarily very much in detail: the point chiefly worthy of notice is that mentioned at p. 537 of vol. vii. of the Journal (No. XVI.), in the legislation for Trinidad and Tobago during 1905. That is, the holders of patent rights in Great Britain or other country can obtain letters of registration to protect them in the Colony. Under s. 47 if the Imperial Act of 1883 be made applicable to the Colony by Order in Council, then any person who has applied in England for protection there, or in certain foreign countries, gains a prior title to obtain a patent in the Colony (nothing is said of the Imperial Act of 1901, however). The application must be made in the Colony within twelve months of that made in England or other country.

S. 48 also provides for intercolonial recognising of patents to be mutually arranged.

Agriculture, Cotton Industry.—No. 4 repeals No. 8 of 1905, and substitutes a new enactment, providing for advances of money to possessors of land who desire to grow cotton, and provides for recovery of such advances and interest. The cotton produced remains hypothecated for the money due, notwithstanding anything contained in the "Title by

Registration" Laws; misappropriation of an advance is made criminally punishable as larceny, and, in the discretion of Government, collateral security may be required in any case before grant of an advance.

Titles to Land, Registration (No. 5).—This Act is to be read with the series of previous enactments on the same matter. S. 3 makes the Registration Acts permissive and directs that "all pending dealings with lands which have not been brought under the 'Title by Registration' Acts may be continued under the said Acts, or may be discontinued," etc. S. 4 gives a corresponding option to a grantee in cases of Crown grants.

Sombrero Islands.—No. 6 is in substitution for No. 1 of 1905. The island is included in the Presidency of the Virgin Islands, with effect from June 17, 1905.

Judicature, Civil Procedure.—No. 7 is an important Act, repealing the existing laws of procedure and practice in the Supreme Court of the Leeward Islands, and enacting that the English practice and procedure shall be followed. Power is reserved to modify it to suit the Colony and to make rules and orders: the law is to take effect only when proclaimed. Bankruptcy jurisdiction is to remain under the procedure of the Leeward Islands Act of 1889. S. 4 provides a rule for interpreting Imperial Acts in such a way as to be applicable to the Colony. Other provisions relate to the Seal of the Court and to the Registrars in the several Presidencies.

Criminal Law, Small Charges (No. 8).—Dealing with assaults on police, annoyance to members of the public, and meddling with boats. It takes the place of No. 7 of 1905, noticed last year.

Criminal Law, Larceny.—No. 10 amends ss. 12 and 13 of the Act No. 15 of 1873, enhancing the penalties.

(i) ANTIGUA.

Ordinances passed—11.

Savings Bank (No. 1).—This Ordinance replaces a number of older regulations: nothing in it seems to call for special remark.

Licences for Sale of Liquor (No. 2).—A small amending Ordinance.

Excise.—No. 3 continues the Rum Duty Law for a further twelve-month.

Defence Force.—No. 4 amends the Law of 1903, and replaces No. 4 of last year.

Cotton Traffic (No. 5).—Cultivators of cotton, and dealers, whether buyers or sellers, are to take out licences; record of every purchase and sale is to be kept, and a vendor must sign a purchaser's record—if unable to write he must have an independent witness. The record is to be made available for police inspection. Penalties are provided for non-compliance with the law: fine not exceeding fifty pounds, and imprisonment in default of payment, which may extend to six months' hard labour.

Emigration and Labour-recruiting (No. 6).—This Ordinance provides for the regulation of labour-recruiting (*collecting emigrants* is the expression used). The Governor in Council is empowered to frame rules and to grant licences, and penalties are provided.

Nos. 7 to 11 are all Supply Ordinances.

(ii) DOMINICA.

Ordinances passed—8.

Supply (Nos. 1, 3, 6).

Emigration (No. 4).—Only licensed persons are to act as agents to collect emigrants from the Island, or arrange for their employment out of the Island. An unlicensed person so doing is liable to a penalty of £50.

Ordnance Property (No. 5).—The Act of 1855, vesting the ordnance property of the Island in His Majesty, is repealed.

Fire Brigades (No. 7).—The chief officer of a fire brigade—that is, of any body of men associated for the purpose of extinguishing fires and paid or recognised by the Government or a municipality—is empowered to remove any persons interfering by their presence with the operations of the brigade, and to take any measures for the protection of life and property he thinks fit, including the demolition of adjacent premises. Police constables are to assist. Damage by a fire brigade is to be "damage by fire" within the meaning of a fire policy.

Telegraph and Electric Lighting (No. 8).—In case of damage done to buildings, growing crops, or private property under the Acts for the above purpose, the amount of compensation is to be referred to arbitration by the arbitrators, one appointed by the Government, the other by the owner of the property, and in case of their disagreement is to be settled by an umpire.

(iii) MONTSERRAT.

Ordinances passed—10.

Agriculture, Imported Plants (No. 1).—The Agricultural Authority is, at its discretion, to put all imported plants through a process of fumigation in order to prevent infection from insect or other pests: it is on the same lines as Antigua, No. 5 of 1905 (noticed at p. 544 of vol. vii., 1906).

Customs Tariff (No. 2).—A new scale of duties upon certain imported goods is fixed.

Shipping, Piers, Wharves (No. 3).—Ordinances 3 of 1892 and 10 of 1897 are repealed, and this Ordinance takes their place. The Port of Plymouth is defined, and the Governor may from time to time appoint other shipping places where a wharf, pier, or jetty may have been made for public use. Rates on goods landed or shipped may be prescribed according to circum-

stances. S. 8 speaks of a Commissioner who is empowered to make rules, subject to the approval of the Legislative Council and sanction of the Governor; and after publication the rules will have the force of law; a penalty not exceeding £5 is assigned to all offences against the rules so prescribed. The rules are to define the limits of shipping places; to regulate and control them and all the piers, wharves, roadsteads, moorings, etc.; also to prescribe the rates to be levied and the mode of collection.

Export Duties.—No. 4 imposes an export duty upon certain articles the growth, produce, and manufacture of the Presidency, and supplies the requisite machinery for enforcing it. The more important articles are animals, cotton, essential oils, fruit and vegetables, lime juice, and sugar.

Emigration (No. 5).—This is a similar Ordinance to No. 4 of Dominica, and prohibits persons collecting emigrants from the Island.

Supply (Nos. 6 and 7).

Liquor.—No. 8 empowers a Justice of the Peace to close licensed premises in case of a riot.

Customs Tariff.—No. 9 reduces the rates of duty on certain articles: wheat, soap, tea, and tobacco, leaf and manufactured.

Tobacco (No. 10).—No one is to sell tobacco without a Government licence. The licence for the year is 4*s*.

(iv) ST. CHRISTOPHER AND NEVIS.

Ordinances passed—7.

Rum.—No. 1 imposes an export duty on rum. No. 2 increases the excise duty on the same article.

Municipal Town of Basseterre (No. 3).—This Ordinance regulates the municipal government of Basseterre in such matters as markets, water supply, cemeteries, health, fire brigade, porters, and boatmen. Powers generally are left in the hands of the Governor in Council; but under s. 35 a committee of not more than eight persons can be appointed to assist when the Governor thinks it desirable.

Supply (Nos. 3, 4, and 5).

Defence Force (No. 6).—Small amendments are made in the law; among them a provision is made for forage allowance to mounted men.

Intoxicating Liquors (No. 8).—This is an Ordinance of fifty-six sections, consolidating the law as to liquor licences. "Liquor" includes brandy, whisky, gin, bay rum, bay water, wines, liqueurs, beer, porter, cider, and all spirituous, alcoholic, malt, and fermented liquors of any kind or sort whatever. No person is henceforth to sell liquor without a licence. Every District Magistrate is four times a year to hold a special court for receiving applications for licences and for renewal. Notice of every application is to

be published. Notice of objection is also to be given. Magistrates before granting a licence or renewal must be satisfied as to the character of the applicant, the situation and suitability of the premises proposed, and the expediency generally of a licence being issued.

In case of refusal, the applicant may appeal to a Judge of the Supreme Court.

There are special provisions as to hotel licences.

A licence is to last three months. No internal communication with unlicensed premises is permitted. Closing hours are prescribed. Penalties are imposed for permitting drunkenness, selling to children, suffering gaming, etc.

(v) VIRGIN ISLANDS.

Ordinances passed—3.

Sombrero Island.—No. 1 repeals No. 3 of 1905, noticed last year, and re-enacts in amended form the inclusion of Sombrero in the Virgin Islands Presidency.

Supply (Nos. 2 and 3).

XI. MEDITERRANEAN COLONIES.

1. CYPRUS.

[*Contributed by* His Honour Stanley Fisher, Esq.]

Game.—No. 2 provides that beccaficos are to be no longer considered as game; gives the High Commissioner power to prohibit the shooting of game in any Government or municipal plantation for five years; makes it unlawful (1) to kill or take francolin for five years, (2) to export game, (3) to export the eggs or skins of any kind of bird without the High Commissioner's permission, (4) to shoot game (other than hares, and wild ducks on lakes) from shelters, or to use decoys for shooting or taking game, (5) to take, sell, expose for sale, or possess the eggs of any game bird, and (6) to use linen or cotton rags when shooting in any Government or municipal plantation or in any State forest.

Cyprus Government Railway.—No. 3 gives the High Commissioner in Council power to make regulations for the management and due and profitable working of the Cyprus Government Railway and for the safety of persons travelling or employed on it. Power is given to the High Commissioner to give police powers to railway servants while performing their duty.

Fire-arms.—No. 4 enlarges the power given to the High Commissioner by Law 13 of 1901 (see Journal, No. X. p. 359) by enabling him to remove the incapacity to carry fire-arms from persons whose incapacity arises from having been convicted of a crime of violence.

Steam-engines (Fuel).—No. 6 makes it unlawful (under a maximum penalty of £5) to use wood as fuel for steam-engines for three years from July 1, 1906.

Taxation Amendment.—No. 7 abolishes Verglir Teettu, an income-tax; Verglir Trad, a tax on the annual value of immovable property, and Bedel-i-Askeri, a tax of 2½s. payable annually in lieu of military service by all able-bodied male Ottoman subjects in Cyprus (with some exceptions, *e.g.* priests) between the ages of 18 and 60. Provision is made for increasing certain excise and import duties.

Malicious Injury (No. 8).—The main feature of this law is that it seeks to save a village from liability to pay damages in cases where property has been brought within its boundaries for the purpose of being there injured, and to cast the liability on the village from which the property has been removed.

Village Authorities.—No. 10 repeals, and largely re-enacts, the Muleteers Law, 1891, and provides for the election of muleteers and agas every two years.

Wine and Spirit Duties.—No. 13 repeals the Zijriyyé Tax Abolition Law, 1901 (see Journal, No. X. p. 359), and provides for the levying of certain excise and export duties instead of the duties imposed by that law.

2. GIBRALTAR.

[*Contributed by* Edward Manson, Esq.]

Ordinances passed—9.

Governor's Salary (No. 1).—Permits the Governor, with the consent of the Secretary of State, to be absent from the Colony for a period not exceeding six weeks in the year on full pay.

Shipowners' Negligence (No. 3).—This Ordinance empowers the Supreme Court, where a claim is made against the non-resident owner or master of a ship for damages for injury caused by the ship, to detain the ship until the claim has been satisfied or security given.

Pensions (No. 4).—No pension except in case of abolition or re-organisation of an office, is to be paid to a public officer under sixty, unless incapacitated by mental or bodily infirmity. The maximum pension is not to exceed two-thirds of the salary. Public officers may be compulsorily retired at sixty. No pension is to be matter of right.

Health (No. 5).—An additional area is brought within the Sanitary

Ordinance of 1906, and the Governor is empowered to include in the Ordinance any infectious disease other than those specifically mentioned.

Vaccination (No. 7).—The parent or other person having the custody of any child is, within three months of such child attaining the age of twelve, to have it re-vaccinated.

3. MALTA.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—12.

Customs (No. 3).—Where any goods subject to import duty, but not disclosed in the manifest, are found on a vessel on its being brought into port, they are to be deposited in bond and confiscated, unless the master within ten days declares his intention to re-export them and does re-export them within three months. The master may also be required to deposit an equivalent to the import duty, not returnable to him till the goods have been certified as introduced into the country where the certificate was given.

Medicine (No. 5).—Physicians are not—except in cases of absolute necessity—to combine pharmaceutical practice with their profession. But this is not to apply to District Government Medical Officers.

Health (No. 6).—The flesh or fat of swine and beeves affected with measles is not to be sold except after certain disinfecting processes.

Licences for cold storage may be granted. There are a number of minor amendments.

No. 8 amends the organisation of the Public Health Department.

Supply (Nos. 7, 10).

Spirits (No. 9).—The possession, without a licence, of a still for making spirits is made punishable with a fine of not less than £5.

Police (No. 11).—Where a police officer has been permanently injured in the actual discharge of his duty, without his own default and by some injury specially attributable to the nature of his duties, his pension may be increased in proportion to his injuries.

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In Canada eight public holidays would appear to be the general allowance. They are New Year's Day, Good Friday, Easter Monday, Christmas Day, the birthday of the Sovereign, Victoria Day, Dominion Day, and Labour Day. In some provinces an Arbor Day has been added; and the new provinces of Alberta and Saskatchewan, retaining the laws of the North-West Territories (consolidated Ordinances 1898, c. 1, s. 19), observe Ash Wednesday. In Quebec (56 Vic. c. 40) of course, owing to the Roman Catholic influence, the holidays are quite different, being the Festival of the Epiphany, Ash Wednesday, Good Friday, Easter Monday, the Ascension, All Saints' Day, Conception, and Christmas Day; but Labour Day was added in 1897 (60 Vic. c. 49, s. 1).

In the Australian Commonwealth there is quite as much and sometimes more readiness to make holiday; but New South Wales (Act No. 15 of 1906) has taken the lead in reducing the number by discontinuing the observance of Anniversary Day (January 26). Easter Eve is generally a holiday, and a feature of the Australian legislation is that, as a general rule, the special holidays are kept on the Monday following the appointed day. (See New South Wales Act No. 30 of 1899, Queensland No. 8 of 1904, South Australia No. 571, s. 3, Tasmania No. 4 of 1903, s. 4, and Victoria No. 1661, s. 2). The practice of the States is not quite uniform. New South Wales (Act No. 9 of 1898) has the following as holidays: January 1, Good Friday, Easter Eve, Easter Monday, the Sovereign's birthday, August 1, the Prince of Wales's birthday, Christmas Day, and December 26. In Victoria (1897, No. 1534) there are in addition Easter Tuesday, January 26, April 21, and the first Thursday in September, but August 1 is omitted. The maximum would appear to have been reached in Queensland (No. 8 of 1904), where there are fourteeen public holidays. In Mauritius (Revised Ordinance 1905, No. 4 of 1881), it may be noted, there are thirteen holidays, including two in August and two in November. The Queenslanders, however, are still far from the number of holy days formerly more or less observed in England by cessation of labour.

New Zealand has thirteen holidays, including the days of the patron saints of England, Scotland, and Ireland (Act No. 28 of 1902). The South African Colonies have holidays on much the same scale as the Canadian. It may be noted that Ascension Day is a holiday in Cape Colony (No. 3 of 1856, s. 1); Michaelmas Day in Natal (No. 18 of 1901), and Dingaan's Day (December 16), an old Dutch anniversary, in the Transvaal (No. 37 of 1903) and Orange River (Law 24 of 1894) Colonies.

Reference may also be made to some of the Crown Colonies. The birthday of the Heir-Apparent is in many places a holiday. In the East the Chinese New Year is observed for one or two days. There is generally some local anniversary, as for example the settlement of Singapore (February 6), and of Penang (August 12) in the Straits Settlement (No. xxvi. of 1902). Other places retain the influence of an earlier possessor, as

Trinidad and Tobago (Revised Laws, 1903, vol. iii. p. 136), where the observance of the festival of Corpus Christi recalls that the former once belonged to Spain. Thus colonial legislation affords ample support to those who desire to add another to the number of statutory holidays.

The late Professor Dernburg.—The death of Professor Heinrich Dernburg of Berlin, in his 79th year, is a serious loss to legal science. His *Preussisches Privatrecht*, his *Pandekten*, and his *Bürgerliches Recht des Deutschen Reichs und Preussens*, are not only distinguished by wealth of material, but also by their plastic method of representation and by their vivid and illuminating style. Some newspapers have referred to the death of the "uncle of the German Colonial Secretary," but some day, when things will be seen in their true proportions, the present head of the German Colonial Office will be described as the nephew of that eminent scholar who, during one third of a century, was one of the chief ornaments of the University of Berlin, and who, as a member of the Prussian Upper House, added distinction to the deliberations of that assembly.

The Romilly Society.—A conference of this Society is to be held early in 1908 with special reference to the subject of Capital Punishment. Never was there a time in the Society's history when it had more interesting topics to discuss; never a time when its work presented a more encouraging aspect. Pity that the shade of good Sir Samuel Romilly cannot be there to see the fruits of his labours in the amelioration of our Criminal Code, the humaner spirit which pervades our prisons and punishments. We are no longer satisfied to repress crime: we are bent on getting at its causes, at reforming, regenerating the offender; nor does it end there. A new ideal—enshrined in the old adage that "prevention is better than cure"—is presenting itself. The young are to be saved from ever drifting into a life of crime: we see it in the Children's Courts which, as Mr. Bridgwater pointed out in the last number of the Journal, are being adopted now in almost every civilised country, to secure young offenders from contaminating contact with the depraved. We see it in the State guardianship established by the Probation of Offenders Act, 1906, in lieu of imprisonment, to keep the youthful offender away from drink and bad companions, and to encourage him to "lead an honest and industrious life"; in the Borstal system, which enables him to lead such a life by teaching him a trade. The radically vicious—those who furnish the class of habitual criminals—are, after all, but a small minority: the bulk of criminals have taken to evil-doing from neglect or temptations, or simply to live, and the chief aim now of the social reformer is to segregate the two classes, and give each class its proper treatment—to change the one, by discipline and encouragement, into good citizens: and to see that the other—the hardened and the irreclaimable—shall at least do as little harm to society as possible.

The State and the "Unimprovable."—The hardened criminal—the habitual criminal—presents an entirely different problem. Such a man

may not be wholly depraved—he may even own some fine qualities; but he does not and cannot reform: citizenship has no meaning for him. Of the inmates of our convict prisons 56 per cent.—so Sir Ruggles Bruce states—have been convicted five times or oftener of the graver offences. Theirs is a life spent in and out of gaol. For such the short sentence is worse than useless; it is demoralising. It is not altogether the criminal's fault. Few employers care to take a man who has been in prison. Probably he knows no trade by which to earn an honest livelihood. What more natural than that, yielding to recklessness or the criminal taint in his blood, he should follow the line of least resistance and relapse into the old life of crime? Natural, no doubt, but it is a state of things which the State cannot afford to tolerate, which it has already permitted too long, and it is satisfactory therefore to find that the Home Secretary is to deal with the matter next session. The essence of the proposed scheme is to give the Court power to detain the offender for a prolonged period, not under the present penal system, but some modified arrangement, under which he would be forced to work, and, at all events, be kept out of mischief. Those who have read the recent reviews of legislation in this Journal will have noted how much has been and is being done in the domain of agriculture to get rid of fruit and plant pests and parasites. The habitual criminal is the pest, the parasite of our social organism, and surely as well worthy the State's attention. So at least thinks the State of Indiana, which has just passed an Act providing for the life imprisonment of habitual criminals upon a third conviction for felony. It has ventured upon even more heroic legislation in providing (c. 215) for the sterilization of confirmed criminals, idiots, imbeciles, and rapists, in cases that have been pronounced "unimprovable." The decision in these cases is left to a committee of experts made up of the chief physician of the institution and two skilled surgeons of recognised ability, together with the board of managers. "Doce disce aut discede" was the motto which Dean Colet inscribed on the walls for the scholars of Paul. It is a motto which the State may well take for the teaching of its citizens.

The Views of the English Courts as to French Conditions of Marriage.—The recent case of *Ogden* v. *Ogden*, owing to the somewhat complicated state of facts under which it came before the Courts, has aroused a considerable amount of public interest, but the decision of the only serious legal question involved in the case could not have surprised anybody who is familiar with the authorities. The main question as stated in the judgment of the Court as reported in *The Times* (24 *Times L.R.* on p. 96) was "whether or not a marriage taking place in England between an English subject domiciled in England with a foreigner temporarily residing in this country, which it was not disputed would be held in England to be a valid marriage, if celebrated between two inhabitants of this country, ought to be held invalid *on the ground that the foreigner was by the statute law of his country subjected to*

the necessity of complying with certain formalities in order to be at liberty to enter into the marriage."

The phraseology of this sentence, as it appears in the report from which we have quoted, is open to some criticism, and it ought also to be understood that the Court when thus formulating the question did in fact assume that the absence of the consent required by French law did not, in the view of English law, amount to more than non-compliance with a formality, but it is clear that no conclusion can be drawn from *Ogden* v. *Ogden* as to the effect of any personal disability imposed on one of the parties by the law of his or her domicile, *other than the disability created by the absence of the consent required by French law.* If the Court had decided that such a disability, in the view of English law, invalidated a marriage which, but for such disability, would have been valid, it would in effect have overruled the principle of *Simonin* v. *Mallac* (2 Sw. and Tr. 67) as explained and affirmed by *Sottomayer* v. *Barros* (3 P.D. 1, 7).

We must, however, add that some of the expressions of opinion contained in the judgment travel far beyond the limits indicated in the passage quoted above, and that these expressions of opinion will materially add to the difficulties of the practitioner who has to advise on the effect given by English Courts to an impediment to marriage imposed by foreign law, or of the jurist who tries to find some coherence and logical order in the rules as to the conflict of laws established by judicial decisions. We hope to deal with this subject more fully in our next number.

The Status of Natural Children.—To those who are watching with interest and anxiety the assumption by the State of so many of the duties which once devolved upon the family, few books are more instructive than that by M. Maurice Travers on *La Puissance paternelle.* He has recently published a supplement describing and explaining the Law of July 2, 1907. The principle of that measure—the supplement to others of like tendency—is to place parents of recognised natural children in all respects in the same position to them as they should to legitimate children. We may refer to the character of recent legislation in Saskatchewan to show that in countries far apart—in Canada as well as France—there is a movement towards placing illegitimate children in a very different position from that hitherto given to them. We are not without hope that some contributor will describe the various stages in the remarkable changes which have taken place as to their status.

Lotteries in England and America.—A lottery is a distribution of prizes by lot or chance; so say the lexicographers, and following this definition the Courts here have held that if a competition is decided by skill and judgment, then it is not a lottery. The difficulty is that in most cases of competitions it is a mixed matter. There is an element of skill, and there is an element of chance, and it is at this point that English and American law diverge, as a recent case (*Waite* v. *Press Publishing*

Association, 155 Fed. ed. 58 [C.C.A.], illustrates. In England it has been held by the Court of Appeal (*Hall* v. *Cox* [1899], 1 Q.B. 198), for instance, "that an offer by a newspaper of a money prize for a correct prediction of the number of births and deaths in London during a named week is not a lottery." "The result," said Lord Justice A. L. Smith in giving judgment, "depends largely on chance, but not entirely. There is an element of skill in the inquiry, dependent on the investigation of the returns for previous years, and the consideration of the increase of the population, the death-rate, and such like statistical investigation"; so, too, our Courts have held there is an element of judgment in "spotting" the winner of a horse-race which prevents such a competition being a lottery (*Commanda* v. *Halton*, 1891, 40 L.J.M.C. 116). In the American case above referred to the facts were similar to *Hall* v. *Cox*: a prize was offered by a periodical to a person who should submit the nearest correct estimate of the popular vote for the Presidency, and should at the same time subscribe to the periodical. The American Court held this to be a lottery, and it did so on the ground that though there might be an element of skill in arriving at the correct result, chance, not skill, is *the dominant factor*. A competitor's ignorance of any of the causes which will determine the exact result desired must leave the correctness of his estimate dependent—in the last analysis, so the Court seems to have thought—on chance. In other words, it is guess work, with a minimum of calculation thrown in. Our English doctrine on the subject, as laid down in *Hall* v. *Cox*, lets in all the mischiefs of the lottery; and how great these mischiefs are, how widespread and powerful is the passion of cupidity which this sort of disguised gambling can excite, is shown in the recent Limerick craze, and the figures quoted by the Postmaster-General as to the number of sixpenny postal orders taken out—5,772,000 in three months. It is only fair to add that Mr. Justice Stirling's able and exhaustive judgment in the "Missing Word Competition" (*Barclay* v. *Pearson* [1893], 2 Ch. 154) approximates much more nearly to the American point of view.

M. Renault and the Nobel Prize.—There will be general satisfaction that the Nobel Prize of Peace has been awarded by the Nobel Committee to M. Renault, the distinguished French Jurist. For very many years he has been a prominent figure in all congresses or conferences in which questions of International Law have been discussed. He recently played at the Hague a very important part, and his report on the scheme for an International Prize Court—a report, by the way, which argues for the establishment of an International Prize Court of Appeal without waiting for a Prize Code—is perhaps the most valuable literature which the Conference produced. Even more valuable than his legal works are his many services as an International Jurist, a mediator between conflicting systems, and an agent of fusion and harmony. He is a type of a Jurist rare to-day, but one much needed if international arbitration is to succeed in matters as to which national feelings are strong.

A Library of Comparative Law.—The *Times* of December 26 contains an article on this subject well worthy of attention. The writer begins by pointing out the growing appreciation of the importance to useful legislation of a knowledge of the laws and practices of other countries, and he quotes the words of the Home Secretary to the International Association of Labour Legislation, that such knowledge is of "enormous advantage" to a ny Government undertaking industrial legislation. It is significant, too, he notes, how many Parliamentary and Departmental Reports and Returns now comprise an account of the law and the practice on the particular matter prevailing in different parts of the Empire or in foreign countries. The Motor Car Commission, the London Traffic Commission, the Income Tax Inquiry, the Special Inquiries of the Board of Education as to the age at which compulsory education begins in foreign countries, or the feeding of poor children, the State subsidizing of theatres, are but a few notable instances of the new method. So far, so good; but one thing, as the writer goes on to point out, is still lacking to the adequate study of comparative law, and it is a Library. That is a fact of which this Society has never lost sight, and which it has made efforts from time to time to remedy. The abstract and brief chronicle which it publishes annually of the vast volume of legislation in the Empire, of the United States, and of some foreign countries, is interesting and instructive as a survey; but for those who would study thoroughly any topic of comparative law it is indispensable that they should be able to consult the Acts, the Ordinances, the Codes themselves, the reported decisions of the Courts, the works of the textbook writers, commentators, historians, and jurists, legal pamphlets and reviews (often containing most valuable matter) from all parts of the world; Blue Books, White Books, Yellow Books; in a word, the whole literature of the law, collected together in some conveniently central building, catalogued and made freely accessible to all bonâ fide students. At present there is nothing which fulfils this ideal. The Foreign Office, the Colonial Office, the Inns of Court, the Law Society, the Bar Library, the Royal Colonial Institute, the London School of Economics, the British Museum, have each of them a certain amount of comparative law literature, which, pooled—if that were possible, which it is not—would make a worthy library, but no one of them possesses a collection which can be called in any sense complete or adequate, and even were they complete or adequate, most of these collections are accessible only to members. Meanwhile the French Société de Législation comparée—the pioneer in this work—has a library of no less than 40,000 volumes!

Mr. Sidney Webb, in a letter to the editors of this Journal on the above topic, says: "The admirable article in to-day's *Times* ought to bear fruit. If only some one would find £20,000 there could be built an admirable central library next the London School of Economics, on the site still vacant, but not likely to be long available.

"My second suggestion is more modest. Could we not, *faute de millionaire*

accept the present situation of separate activities and scattered collections; and remedy it by a *united catalogue*, kept for current use on cards (of which fifty might be printed) at each institution; periodically published by subject-sections, to serve as useful bibliographies, and maintained by some sort of joint committee? In this way, though an inquirer might have to go to two or three depositaries, he would at any rate know at once what was available in all London. And to such a joint committee Colonial and Foreign Governments, and our own Departments, might gradually send much—the joint committee distributing whatever it thus got among the represented institutions, according to their several specialities."

The Lawyer and the Legislator in America.—"Why are we here?" said the President of the American Bar Association—the Hon. A. Parker, LL.D., at its recent meeting. "We are here because we have ideals. . . . Only from the efforts of a people to attain high ideals can true progress result;" and he went on to claim that the lawyer in America does more for such true progress, the realisation of such ideals, than the legislator: why? Because the aim of the lawyer is to emphasize those principles which, under the name of the Common Law, express the genius, the habits, and the customs of the people, which lie at the root of the national life, which fix the standard of justice, and so approximate more nearly to the national ideal than what Lord Campbell called "the crude enactments of the Legislature. In judge-made laws, so-called, the aim of both Court and of counsel is to work out this ideal of national justice, but to work it out by finding it, not by making it:

> Not clinging to some ancient saw,
> Not mastered by some modern term,
> Not swift, nor slow, to change, but firm,
> And in its season bring the law.

The function of the legislator is supplementary to that of the Judge. He strives, or should strive, to ascertain, to interpret, and to formulate the aspirations, the growing but undefined and imperfect efforts of a people to remedy the defects of their laws or customs: and this the legislator sometimes does successfully; more often he fails to do. Perhaps he misinterprets the will of the people; perhaps his objective may be right but his methods impossible; perhaps he pushes his Bill in the interest of a political organisation; perhaps he presents it in ignorance of his subject, to win applause or even unlawful gain. As an instance of the mass of mischievous legislation, the President of the Bar Association states that only this year the Governor of New York State felt himself constrained as a conscientious lawyer to veto not less than 484 Bills. No wonder that one of the ideals of the American Bar Association is to "elevate the standard of statute-making."

The History of Civil Marriage.—In Dr. Maximilan Neustadt's *Kritische*

Studien zum Familienrecht is a very instructive study of the history of legislation in regard to civil marriage. He points out that the facile innovator, Joseph II., influenced by the suggestion of Pufendorf, was the first to embody in legislation (Law of January 16, 1789) the principle that marriage is a civil contract. This was quickly followed by the Frael Law of 1791, the Prussian Londrecht of 1794, and the Bodem Law of 1807. In Dr. Neustadt's learned account of the views of philosophers, theologians, and lawyers, from the time of the Codes to that of Schophenhoues, it is made clear that a remarkable departure was made by the writings of Luther, who took up a position which Dr. Neustadt describes at length. Interesting, too, is his criticism of the attitude of the framers of the German Civil Code to this institution, and to which they had no clear juridical conception (*eine einheitliche Grundlage*).

Compulsory International Purchase.—Professor Gregory discusses in the *Harvard Law Review* an interesting question of growing importance under the head of "Expropriation by International Agreement." Often a work of great consequence to one State cannot be carried out without trenching upon the rights of another State. In America this question frequently presents itself; one State of the Union may need public work, *e.g.* water supply, or disposal of drainage, which cannot be carried out without the consent of an adjacent State. A similar class of questions may arise between independent States. Dr. Gregory seems to have no doubt that one day provision will be made for such difficulties. "Very great interests required the Suez Canal. The concessions for it were fortunately got; but if they had been denied, ought the great interests to be sacrified to the small or compelled to get the concessions by force or overawing?" As to the Panama Canal, he asks "whether a beneficial project of world-wide importance ought to be absolutely defeated if a local power denies such concessions"—questions which suggest a dangerous extension of the power of the great States of the world. Dr. Gregory is hopeful as to the future; "even the difficulty between nations that has been spoken of may be modified and perhaps removed by general treaties which allow rights of neutral dominion in foreign territory for important public service corporations, even if they do not concede territory or jurisdiction."

A Bahamas Series of Law Reports.—From the Bahamas comes the first number of a new and promising series of Law Reports, edited by a member of the local Bar, Mr. Kenneth Solomon. Such reports are of value from every point of view. To the outside world they discover what is going on in the Bahamas Courts, and often furnish useful analogies. They help to settle the local law and practice. They are a challenge to criticism, and so have a stimulating effect on the Judges. It is a very varied jurisdiction which is represented in these Reports—Equity, Common Law, Admiralty, Magistrates' Cases, and Cases in Chambers. Among many decisions of interest we note one adopting the principle, now well established here,

that a verdict is not to be interfered with, as against the weight of evidence, unless it is perverse in the sense of being one which twelve reasonable men could not properly have found. The case was a good example of the rule. It involved a question of title to some "bush" land in the Island. The *locus in quo* had been inspected by the jury—a special one—accompanied by the Chief Justice, the counsel to the parties, and the Surveyor-General. A series of specific questions had been submitted by the Chief Justice to the jury, and specifically answered by them. There was no question of law in the case. There were no special circumstances, as in the Australian case of *Aitkin* v. *McMeckan* [1895], A.C. 310, and the New Zealand case of *Clouston & Co.* v. *Corry* [1906], A.C. 122. In such a case it would be *pessimi exempli* to order a new trial. The jury are the constitutional judges in questions of fact, and their verdict ought not to be set aside unless it is given in the face of such a preponderance of evidence on the other side as to make it perverse.

Spain and International Law.—In the volume just published by M. Rafael de Labro, upon *El Instituto Internacional*, there is much information not only with respect to the work and constitution of the Institute, but also as to the international action on the policy of Spain. It is a fault on the part of erudite modern writers that they do not, in reviewing the diplomatic history of Europe, sufficiently dwell upon the past of Spain. Our author's statement on the subject will be instructive, even to experts. The review begins with the treaty of Barcelona in 1493; it is continued until the end of last century. It brings into relief what is apt to be forgotten, the large and important part which even in modern times she has played in diplomacy. Even more interesting are the proofs which he gives of the present activity and interest in international law on the part of Spanish jurists, and the influence which they still, in conjunction with their brethren in South America, exercise upon its development.

Home Rule in Law-Teaching.—Professor Kales contributes to *The Harvard Law Review* an article on "The Evolution of the Case Book." Quite apart from his suggestion as to legal education, it is interesting as showing how in America the State Courts are proceeding on lines of their own, and are guided more and more by their own precedents. Professor Kales cites the following statement: "Fifty years ago thirty-six per cent. of the cases cited by the Court of Appeal of New York were from other jurisdictions, and nearly two per cent. were English. To-day but seventeen per cent. are from internal New York, and but one third of these had to do with constitutional law and bankruptcy." So much is Professor Kales struck by the growth of State law that he thinks that the Harvard Law School Case Book, the work of Professor Langdell, should be superseded by books based upon the decisions of local Courts—in other words, that local law should be made the basis of the law school's regular work. Not to mention many other objections to this course, there is force in

Professor Wambough's criticism, that the student can rarely predict where he will spend his professional life, and that if he is distinctly successful he will deal with business in all parts of the United States.

Arrest for Breach of a Byelaw.—The validity of byelaws, railway and municipal, is a common topic of controversy in our Courts, but it seldom involves such high matters as the liberty of the subject, as was the case recently in Natal (*Lawes & Co.* v. *Pietermaritzburg*, 27 N.L.R. 298). Four natives there, employed in printing works at Pietermaritzburg, were summarily arrested for breach of a municipal byelaw prohibiting any disturbance of the peace by shouting, quarrelling, or collecting a crowd. There was no doubt that the natives had broken the byelaw by shouting, etc.; it was over their summary arrest and the municipal byelaw authorising it that the forensic battle waxed hot. The byelaw, it was contended, was, within the meaning of the Municipal Corporation Law, "repugnant to the general spirit and intent of the laws in force" in the Colony, and therefore bad; and this contention might have been well founded if the Municipal Corporation Law in question had not expressly authorised the Corporation to empower its officers to summarily arrest persons contravening its byelaws. In the face of this provision, which the byelaw merely recapitulated, Bale, C.J., and Broome, J., did not see their way to holding the byelaw ultra vires, though another member of the Court—Beaumont, J.—did. In the latter's view the byelaw was unreasonable and bad, and "contrary to the spirit and intent of the law," because it would lead to the tyranny of citizens being liable to summary arrest for breach of some four hundred "artificially-created offences." But while thus disallowing the byelaw, he did not disagree with the conclusion at which the Chief Justice had arrived—upholding the conviction of the natives—being of opinion (as was also the Chief Justice) that, apart from the Municipal Corporation Law, the arrest was justified by s. 22 of an Ordinance of 1845, under which "all officers of the law proper for the execution of criminal warrants shall be and are hereby authorised and required to arrest every person who shall commit any crime or breach of the peace in their presence." Summary arrest may seem formidable to the modern citizen, but those who read Miss Mary Bateson's *Borough Customs* will find that the municipalities of those early days had much more drastic modes of dealing with offenders against law and order.

Debentures to Bearer in South Africa.—Debentures to bearer have, ever since the decision of Mr. Justice (now Lord Justice) Kennedy, in *Bechuanaland Exploration Co.* v. *London Trading Bank* ([1898] 2 Q.B. 658), been recognised in this country as negotiable instruments. The question of their negotiability in Cape Colony has recently been raised in a case of *African Banking Corporation* v. *Official Liquidator of the Grand Junction Railway, Limited* The debentures in question were debentures to bearer, covered by a bond The Cape Colony Act which regulates these matters, No. 43 of 1895, does not in terms declare that debentures payable to bearer are to be deemed

negotiable instruments, but it endows them with some of the qualities which are peculiar to negotiable instruments, and the Chief Justice, Sir Henry de Villiers, was of opinion that every reason which originally existed for attaching the quality of negotiability to a recognised negotiable instrument would equally apply to the debenture in question. The circumstances of the case illustrated the hardship which would have resulted from holding otherwise. The Railway Company, after creating under its powers a series of debentures to bearer and issuing some of them, had ceded its undertaking to third parties, and had covenanted with such third parties not to issue any more debentures of the series. Despite the covenant, the Company did issue more, and they came into the hands of the plaintiff bank as equitable mortgagee by deposit without notice. But this innocency would have been of no avail if the debentures were not negotiable instruments. As choses in action the Bank would still take them, subject to equities. No evidence of mercantile custom was—as in the English case—given or called for: the Chief Justice seems to have decided the point as a matter of law.

Cy près Doctrine in India.—A recent case in the Bombay Law Reporter, *re* Hovmasji Framji Warden, contains a valuable judgment by Mr. Justice Davar on the application of the cy près doctrine to charitable gifts. The gift in question was by a wealthy Parsee merchant for the erection of a "large, commodious, and comfortable hall, for the purposes and use of Parsees professing Zoroastrian faith." For this object he bequeathed a sum of Rs.55,000 to trustees, with a further sum of Rs.10,000 for the upkeeping of the hall. When, however, the trustees came to carry out the terms of the trust, and had purchased a site, they found the amount quite inadequate for the erection of a hall such as that contemplated by the testator; the only way in which the scheme could possibly be made practicable was by selling part of the land, letting the rest to a tenant if any could be found, and accumulating the residue of the funds for a number of years. The discouraging feature of the situation was that by the general consent of the Parsee community in Bengal no hall was wanted; there were plenty already. What *was* wanted was a hospital for the benefit of the Parsee community, and the point was thus neatly raised, whether the Court would, under the cy près doctrine, sanction the gift being diverted to an object different from that designated by the testator. On this point the English authorities give no very clear guidance. Lord Eldon, as might be expected, was for adhering strictly to the particular objects pointed out by the testator, but Mr. Justice Davar, after a very careful review of the authorities, sums up the result by saying that the Court will call in the assistance of the cy près doctrine when it finds that the attainment of the original objects is *impracticable in fact*, or that it would be impolitic to carry out the original object literally, so the hospital replaces the hall. This is a conclusion which strongly commends itself to common sense.

"Socialist" and its Connotation.—A newspaper calling a man a

"Socialist" is not by itself defamatory. So the Supreme Court of New South Wales has recently decided; and it is just as well it should be so, seeing how freely that word is banded about nowadays. But the word may, with a context, convey an innuendo making it defamatory, and this is what the plaintiff in the New South Wales case (*Slater* v. *Daily Telegraph Newspaper Co.*) contended it did there. He (the plaintiff) was, for the second time, a candidate for a seat in the Federal Parliament, and with reference to his first candidature the defendant newspaper, which was an anti-Socialistic organ, wrote, "The Socialistic candidate"—meaning the plaintiff—"at the last Federal elections polled only ninety votes." It then went on to denounce Socialism in a series of articles, of which the following is a specimen: "Before polling day it is the duty of every constituency where a Socialist candidate is up, to depute one of its most determined electors to publicly ask him a pertinent question or two and insist upon a straight answer. Never mind how he may wriggle. Nail him down to his platform, so that, after the poll, when everything becomes so different, we may all know where to find him. That platform obliges him to support the policy of nationalising industries, for which specific proposals—involving the sugar industry, the tobacco industry, and the shipping industry—are definitely announced. But nothing is said about the process by which this is to be accomplished. There are, however, only two ways by which it can be done. If the Commonwealth wishes to take over any of the properties in question, it will either have to steal them from their present owners or buy them at market value. The first question for the Socialist candidate to be made to answer is, which of these two methods he favours. If he says the thieving method, well and good. That candid avowal will enable him to claim the credit of being, at all events, a daylight thief, which is currently supposed to be much more respectable than the nocturnal variety." It was remarks in this vein which the plaintiff complained of as giving an innuendo to the description of him as a Socialistic candidate. But the Court was of opinion that the articles were not an attack upon the plaintiff as an individual, only fair comment upon a matter of public interest and a suggested novel system of government, and that there was no evidence upon which a rational verdict for the plaintiff for libel could be founded. All Socialists are not confiscators, and the articles nowhere said so, as the Chief Justice pointed out. The very form of question proposed for heckling the plaintiff implied indeed that Socialism might proceed by honest methods—*i.e.* by purchase at market value—in its scheme of nationalising industries.

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